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## BOARD ROOMS AND JAIL CELLS: ASSESSING NGO APPROACHES TO PRIVATE ENVIRONMENTAL GOVERNANCE

Joshua Ulan Galperin\*

Although it had been mentioned in other disciplines, the term “private environmental governance” entered the legal literature in 2007.<sup>1</sup> In the first paragraph of the article that imported the term, Professor Michael Vandenberg wrote, “Nongovernmental organizations (NGOs), rather than lobbying national and international governmental bodies to generate public requirements, are using consumer pressure to demand that corporations engage in . . . private regulation.”<sup>2</sup> Thus, from its very beginning, the legal scholarship on private environmental governance has explicitly acknowledged the role of NGOs. As the study of private environmental governance has grown in volume, sophistication, and recognition, the role of NGOs has remained explicit but has not developed far beyond the mere

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1. Westlaw search, Jun. 7, 2018, for “private environmental governance” identifies Michael P. Vandenberg, *The New Wal-Mart Effect: The Role of Private Contracting in Global Governance*, 54 UCLA L. REV. 913, 925 (2007) [hereinafter Vandenberg, *Wal-Mart*] as the first instance of the term in the legal literature. Use of “private environmental governance” in other fields predated Professor Vandenberg’s 2007 usage. See, e.g., Robert Falkner, *Private Environmental Governance and International Relations: Exploring the Links*, 3 GLOBAL ENVTL. POL. 72 (2003); see also Michael P. Vandenberg, *Private Environmental Governance*, 99 CORNELL L. REV. 129, 139 (2013) [hereinafter Vandenberg, *Private Environmental Governance*] (“[A]n enormous amount of scholarship has been published on private governance activities, although much of that scholarship has appeared in the social science literature or areas of the legal literature outside of environmental law.”).

2. Vandenberg, *Wal-Mart*, *supra* note 1, at 915.

recognition of their importance.<sup>3</sup> By developing and applying a framework for assessment of NGO activity and rhetoric, this article aims to start a more vigorous consideration of the role of NGOs in private environmental governance.

A brief comparison of two well-known environmental NGOs through the lens of private environmental governance should help illustrate the value of a more precise and purposeful assessment of NGO strategies. The Nature Conservancy (TNC) prides itself on its non-confrontational, collaborative deal making,<sup>4</sup> partnering closely with corporations like chemical giant Dow and agricultural lightning rod Monsanto.<sup>5</sup> Both Dow and Monsanto, in fact, are members of TNC's Business Council along with the likes of BP, Shell, and Cargill.<sup>6</sup> Greenpeace, on the other hand, prides itself on direct action, civil disobedience, and non-violent confrontation.<sup>7</sup> Greenpeace has launched combative operations against Dow, Monsanto, and other TNC collaborators.<sup>8</sup> While business partners praise TNC's cooperative

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3. See, e.g., Sarah E. Light & Eric W. Orts, *Parallels in Public and Private Environmental Governance*, 5 MICH. J. ENVTL. & ADMIN. L. 1, 3, 9, 22 (2015) (describing NGOs as not just influencers in private environmental governance, but also as private actors because they are not public institutions and recognizing the importance of NGO instrument choice in private environmental governance contexts); Steph Tai, *Private Environmental Governance and the Trans-Pacific Partnership*, 29 GEO. ENVTL. L. REV. 111, 113 (2016) (identifying the role of NGOs in fostering private environmental governance); Vandenberg, *Private Environmental Governance*, *supra* note 1, at 168-70 (discussing the role of advocacy groups in private environmental governance).

4. *About Us*, NATURE CONSERVANCY [hereinafter TNC, *About Us*], <https://www.nature.org/about-us/index.htm?intc=nature.tnav.about> [<https://perma.cc/6XKF-R6BG>] (“We pursue **non-confrontational, pragmatic solutions** to conservation challenges. . . . We partner with . . . businesses . . .”).

5. *Working with Companies: Companies We Work With*, NATURE CONSERVANCY, <https://www.nature.org/about-us/working-with-companies/companies-we-work-with/index.htm> [<https://perma.cc/W64Z-BGR5>] (listing The Dow Chemical Company as a partner); *Working with Companies: Business Councils*, NATURE CONSERVANCY, <https://www.nature.org/about-us/working-with-companies/businesscouncil/ilc-main-content.xml> [<https://perma.cc/3YVQ-9PWS>] (identifying Monsanto Co. as a member of the Business Council).

6. *Working with Companies: Business Councils*, *supra* note 5.

7. *About*, GREENPEACE [hereinafter Greenpeace, *About*], <http://www.greenpeace.org/usa/about/> [<https://perma.cc/EER9-3TMY>].

8. See, e.g., *Greenpeace Blockades Dow's Texas Headquarters*, GREENPEACE, <http://www.greenpeace.org/usa/news/greenpeace-blockades-dow-s-tex/> [<https://perma.cc/8W76-ZALS>] (describing a blockade of Dow's Texas headquarters); Cassady Craighill, *6 Reasons to March Against Monsanto May 25th*, GREENPEACE (May 22, 2013), <http://www.greenpeace.org/usa/6-reasons-to-march-against-monsanto-may-25th/> [<https://perma.cc/T5HT-S4U4>] (organizing a march against Monsanto).

efforts,<sup>9</sup> they attack Greenpeace's strategies, which have been the subject of litigation accusing Greenpeace of, among other things, racketeering, conspiracy, and defamation.<sup>10</sup> To put the distinction between these two NGOs more starkly: staff of the Nature Conservancy find themselves in board rooms. Staff of Greenpeace find themselves in jail cells.

Given the stark differences in personality and reputation, when it comes to prioritizing environmental protection strategies it is surprising to consider that Greenpeace and TNC are in full agreement on at least one key point. Both TNC and Greenpeace are, fundamentally, proponents of private environmental governance. Private environmental governance is the striving for public goals through private endeavor.<sup>11</sup> Through private land conservation and corporate collaborations, TNC is squarely engaged in private environmental governance.<sup>12</sup> Though less obviously so, through public pressure on private companies, reputational campaigns, and consumer persuasion, Greenpeace too seeks to change the market and the behavior of private companies to achieve environmental goals without relying on government.<sup>13</sup>

"Some groups" write professors Andrew J. Hoffman and Stephanie Bertels "define their identity in terms of a conflict orientation to corporations and corporate activities, others in terms of a consensus orientation with businesses and the capitalist system."<sup>14</sup> This observation, when paired with the comparison

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9. See, e.g., The Nature Conservancy, *Importance of Corporate Sustainability – The Dow Chemical Company*, YOUTUBE (Jun. 19, 2012), <https://www.youtube.com/embed/zDHU6tp6CCY> [<https://perma.cc/SYW2-P33L>] (“[W]e’re very excited about the collaboration with TNC . . .”); The Nature Conservancy, *Importance of Corporate Sustainability – The Coca-Cola Company*, YOUTUBE (Jun. 19, 2012) [https://www.youtube.com/embed/\\_INXZSEHOh0](https://www.youtube.com/embed/_INXZSEHOh0) [<https://perma.cc/4S9L-KB77>] (explaining that working with TNC has been “a tremendous value that I think collectively we deliver”).

10. Nicholas Kusnetz, *Industry Lawsuits Try to Paint Environmental Activism as Illegal Racket*, INSIDECLIMATE NEWS (Oct. 5, 2017), <https://insideclimatenews.org/news/04102017/greenpeace-rico-racketeering-lawsuit-environmental-activism-resolute-dakota-access-> [<https://perma.cc/J7WW-T2KA>].

11. Vandenberg, *Private Environmental Governance*, *supra* note 1, at 133.

12. TNC, *About Us*, *supra* note 4.

13. Greenpeace, *About*, *supra* note 7.

14. Andrew J. Hoffman & Stephanie Bertels, *Who is Part of the Environmental Movement? Assessing Network Linkages Between NGOs and Corporations*, in GOOD COP/BAD COP: ENVIRONMENTAL NGOS AND THEIR STRATEGIES TOWARD BUSINESS 48, 62 (Thomas P. Lyon ed., 2010).

between Greenpeace and TNC, highlights the value of careful attention to how environmental NGOs situate themselves in relation to governance rather than in relation to corporations. TNC certainly defines itself as a corporate-consensus-oriented group, while Greenpeace accepts its corporate-conflict orientation. But the conflict/cooperation gradient is an oversimplification because it neglects NGOs' more fundamental governance philosophies, preferences, and strategies. That is, as the TNC-Greenpeace comparison illustrates, regardless of an NGO's relationship with corporations, it can still be a supporter of the "capitalist system" to which Hoffman and Bertels refer.<sup>15</sup> It can still be a participant in, even a supporter of, private governance if the NGO seeks change primarily in private actors rather than public regulations.

This brief comparison signals the need to look closely at the goals, strategies, targets, and tactics of environmental NGOs, and this article offers a framework for taking that closer look. More rigorous analysis of environmental NGOs will help scholars and practitioners better understand surprising overlaps such as the one between TNC and Greenpeace. It will allow us to frame NGO operations in a consistent way that will facilitate ongoing comparison, which will in turn help us understand the past, present, and future of private environmental governance. Because NGOs so often engage in both private and public strategies, a standardized framework for analyzing NGO operations will also help tease apart the way in which engagement with private environmental governance will impact the success of and reliance on more traditional public environmental governance. This article presents a framework for assessing NGO efforts and will apply that framework to a diverse set of prominent environmental NGOs in order to demonstrate its value.

The next section of this article will explore the literature on private environmental governance to uncover the way scholars have so far considered the role of NGOs. Section III will detail the NGO assessment framework that this article proposes. Section IV will explain the methods for data gathering and analysis. Section V will present the findings of the framework as applied to a small set of diverse environmental NGOs. Section

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15. *Id.* at 61-62.

VI offers concluding thoughts on the important role of NGOs in private environmental governance.

## II. NGOS IN THE PRIVATE ENVIRONMENTAL GOVERNANCE LITERATURE

The literature on private environmental governance is diverse, but, at least in the legal academy, has yet to address the role of NGOs in detail. This section looks closely at those legal articles on private environmental governance that have offered some insight into the role of NGOs, looks briefly at the non-legal literature, and attempts to summarize the field as a baseline for analyzing specific NGOs.

### A. The Legal Literature

When Professor Vandenberg introduced the concept of private environmental governance to the legal academy in 2007 he made sure to highlight the role of NGOs.<sup>16</sup> Not only did his article, *The New Wal-Mart Effect*, focus on NGOs in the very first paragraph, it also considered their importance throughout the analysis and returned to NGOs in the two concluding paragraphs.<sup>17</sup>

*Wal-Mart's* broad lesson is that environmental governance has shifted since it came to the national stage in the early 1970s.<sup>18</sup> Modern environmental governance is primarily characterized by “the traditional focus on states and governments.”<sup>19</sup> The 1990s saw a shift from government supremacy to public-private hybrid governance, as characterized by so-called New Governance or collaborative governance.<sup>20</sup> The more recent change that Vandenberg identified was yet another step in the trend of increased private responsibility and decreased public primacy. In many cases, “fields that have traditionally been the subject of state-centric public regulation” were not only being governed through hybrid public-private decisionmaking, private parties were becoming the exclusive decisionmakers.<sup>21</sup> This is private

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16. Vandenberg, *Wal-Mart*, *supra* note 1, at 915.

17. *Id.* at 915, 942, 960-63, 966-70.

18. *Id.* at 915.

19. *Id.*

20. *Id.*

21. Vandenberg, *Wal-Mart*, *supra* note 1, at 915.

environmental governance, which “bypasses government altogether.”<sup>22</sup>

To demonstrate the contours of private environmental governance, *Wal-Mart* begins by highlighting the challenges to state action, particularly in international-trade-related environmental governance.<sup>23</sup> The problem is that importing countries may have strong domestic environmental protection regimes but they do not control the environmental impacts of production in exporting countries.<sup>24</sup> The importing countries may lack political will or World Trade Organization standards may limit environmentally-protective trade restrictions.<sup>25</sup> Thus, while domestic governments are hamstrung, private firms can—and do—fill “the gap in public regulation of exporting firms’ environmental behavior . . . .”<sup>26</sup>

Vandenbergh provides a typology of private governance strategies. Collective standard setting involves industry-specific standards such as the Forest Stewardship Council’s standards for sustainable forestry productions.<sup>27</sup> Unilateral standards are those standards adopted by an individual firm, which apply to their own operations and purchasing.<sup>28</sup> General Electric, for example, adopted a set of unilateral standards in 1997, which focus on environmental, health, and safety factors and are implemented and monitored exclusively by General Electric auditors and employees.<sup>29</sup> Private contracting is the final category. Private contracting includes a wide range of agreements, and Vandenbergh focuses here on contracts between importing and exporting firms.<sup>30</sup> These contracts can include supply agreements, merger and acquisition agreements, credit agreements, insurance agreements, and more.<sup>31</sup> In all cases, these contracts can include provisions that demand specific environmental processes or products, monitoring, auditing, and

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22. *Id.*

23. *Id.* at 919-21.

24. *Id.*

25. *Id.* at 920-21.

26. Vandenbergh, *Wal-Mart*, *supra* note 1, at 921.

27. *Id.* at 922.

28. *Id.* at 924.

29. *Id.*

30. *Id.* at 925.

31. Vandenbergh, *Wal-Mart*, *supra* note 1, at 925.

information disclosure, among other environmentally conscious terms.<sup>32</sup>

One might wonder why private firms would engage in environmental governance of this nature. Vandenberg points to two related drivers. The first is the “role of consumer preference.”<sup>33</sup> Consumer preference is a simple economic calculation—if consumers prefer environmentally considerate companies then companies that can deliver will reap the benefits—but it is also about a more robust social license.<sup>34</sup> The social license to operate demands that a firm maintains a “favorable view” and “favorable treatment by customers, shareholders, employees, and the communities in which they operate.”<sup>35</sup>

NGOs at least partially create and communicate both the basic consumer preference and the social license.<sup>36</sup> As Vandenberg explains, “[i]t is not possible to evaluate fully which firms were targeted by NGOs, but many of the firms examined [in the *New Wal-Mart Effect*] . . . adopted environmental contracting requirements after NGO public information campaigns or boycotts. Prominent examples of such firms include Wal-Mart, Home Depot, and Staples.”<sup>37</sup>

NGOs gain their power because they can “shape or activate these consumer preferences and seek to convert them into credible threats of boycotts or negative public relations campaigns.”<sup>38</sup> The active, public, combative pressure is Vandenberg’s primary characterization of NGOs in private environmental governance. He frequently cites the “sustained pressure by NGOs,”<sup>39</sup> “NGO-led boycotts or public information campaigns,”<sup>40</sup> “consumer pressure . . . created by or merely expressed by NGOs,”<sup>41</sup> how “firms were targeted by NGOs,”

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32. *Id.*

33. *Id.* at 917.

34. *Id.* at 946.

35. *Id.* at 946-47.

36. Vandenberg, *Wal-Mart*, *supra* note 1, at 947.

37. *Id.*

38. *Id.* at 917.

39. *Id.* at 934.

40. *Id.* at 942.

41. Vandenberg, *Wal-Mart*, *supra* note 1, at 947.



“intense NGO pressure,”<sup>42</sup> “NGO protests,”<sup>43</sup> “NGOs’ ability to coerce,” “credible threat by mobilizing private volunteers,”<sup>44</sup> and the way that “NGOs can sanction importing firms” or “bring pressure to bear.”<sup>45</sup>

The only NGO that Professor Vandenberg mentions by name is Greenpeace,<sup>46</sup> which certainly fits the characterization of NGOs as public pressure groups. Based on this aggressive characterization and perhaps with Greenpeace as his primary image, Vandenberg offers several ideas for improving private environmental governance both by creating new avenues for NGO engagement and reforming NGO participation. Among his more radical ideas is that governments could “modify contract or tort law principles to give NGOs or other private parties the right to enforce supply-chain contract terms even where the importing firm is unwilling to do so.”<sup>47</sup> A change of this nature would allow NGOs to go beyond mere mobilization and to access more assertive and direct forms of influence in private governance, akin to their role in enforcing public regulatory programs through citizen suits. It would also require that NGOs see themselves at least partially as adversaries of private firms.

An alternative option, one that Vandenberg describes as “a more viable option” is “changes in the culture and strategy of NGOs and their donors.”<sup>48</sup> This suggestion certainly relies on a vision of NGOs first as antagonists, a vision of NGOs that are essentially in the mold of Greenpeace. Thus, Vandenberg notes:

Employees and members of NGOs form beliefs and norms that may lead to reluctance to focus NGO efforts on private environmental contracting initiatives. They may be unduly skeptical that firms will adopt or enforce standards of conduct in response to anything but government pressure. In particular, they may be reluctant to accept that firms in some circumstances may have social and market incentives to abide by firm standards and to enforce the relevant provisions in agreements with other firms. Some level of

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42. *Id.*

43. *Id.* at 949.

44. *Id.* at 960.

45. *Id.* at 961.

46. Vandenberg, *Wal-Mart*, *supra* note 1, at 960.

47. *Id.* at 968.

48. *Id.*

collaboration with private firms following the application of pressure may be necessary to shape adequate requirements, yet collaboration may be viewed as morally suspect. NGOs may also fear that private measures will undermine efforts to induce governments to regulate.<sup>49</sup>

Given these predispositions, “Cultural changes within NGOs on these and related issues may be the most important element in the development of private environmental contracting as a form of governance.”<sup>50</sup> Vandenberg finally notes that, without cultural change, NGOs could push for overly burdensome “private standards that reflect NGO biases [and] may lead to misallocation of economic resources.”<sup>51</sup>

This description of NGOs as antagonists and hope for a more collaborative regime reflects a view of NGOs that is based on a relatively narrow sample of NGO philosophies. Greenpeace, or other similarly assertive NGOs such as the Rainforest Action Network, give rise to this view.<sup>52</sup> But TNC or similarly collaborative groups like the Environmental Defense Fund are also important, perhaps even dominant, players.<sup>53</sup>

*The New Wal-Mart Effect*, as the first legal scholarship on private environmental governance, was an empirical demonstration of the field’s importance.<sup>54</sup> In 2013 Vandenberg offered a more comprehensive, theoretical assessment of private environmental governance.<sup>55</sup> This article, *Private Environmental*

49. *Id.* at 968-69. A decade after Vandenberg’s article, I made exactly these critiques in Joshua Ulan Galperin, *Trust Me, I’m A Pragmatist: A Partially Pragmatic Critique of Pragmatic Activism*, 42 COLUM. J. ENVTL. L. 425 (2017) [hereinafter Galperin, *Trust Me*].

50. *Id.* at 969.

51. Vandenberg, *Wal-Mart*, *supra* note 1, at 970.

52. Greenpeace, *About*, *supra* note 7; *Fighting for People & Planet: RAN’s Mission, Vision & Values*, RAINFOREST ACTION NETWORK, [https://www.ran.org/mission\\_and\\_values](https://www.ran.org/mission_and_values) [<https://perma.cc/WTD6-QS7A>] (“Rainforest Action Network preserves forests, protects the climate and upholds human rights by challenging corporate power and systemic injustice . . .”).

53. TNC, *About Us*, *supra* note 4; *About Environmental Defense Fund*, ENVTL. DEF. FUND, <https://www.edf.org/about> [<https://perma.cc/9KY9-JWFG>] (“We build strong partnerships across interests . . .”). The Nature Conservancy and the Environmental Defense Fund are among the largest environmental groups in the United States on a number of metrics including revenue. *The 200 Largest U.S. Charities*, FORBES, [https://www.forbes.com/lists/2011/14/200-largest-us-charities-11\\_rank-environment-animal.html](https://www.forbes.com/lists/2011/14/200-largest-us-charities-11_rank-environment-animal.html) [<https://perma.cc/6CNW-L987>] (filter by category Environment/Animal).

54. Vandenberg, *Wal-Mart*, *supra* note 1, at 918.

55. Vandenberg, *Private Environmental Governance*, *supra* note 1, at 139-40.

*Governance*, also offered a more nuanced view of NGO engagement.<sup>56</sup> Here, Professor Vandenberg identifies NGOs as typical pressure groups as well as collaborators who have an “iterative” relationship with corporate executives.<sup>57</sup>

Recognizing the collaborative relationship between NGOs and corporations that parallels the combative relationship, Vandenberg spends time considering this partnership orientation. NGOs and corporations can have financial relationships<sup>58</sup> and they can have face-to-face interactions.<sup>59</sup> These connections could lead to conflicts of interests as the adversarial wall crumbles, but Vandenberg argues that the social norms that distinguish advocates from corporate leaders will help avoid potential conflicts.<sup>60</sup> The attention to potential conflicts, however, is a matter more of legitimacy than practicality. It implies that NGOs are playing a legitimizing function in addition to the motivating function described in *Wal-Mart*. One could alternatively look at the NGO not as having any particular public responsibility, but instead as a mere private party, making NGO-corporate engagement “just another form of private-private” market behavior.<sup>61</sup>

The conception of NGOs as purely private actors is an accurate legal description, but it is unsatisfactory because it leaves a gap in the theoretical foundations of private environmental governance. Private environmental governance, Vandenberg explains, does not “draw on democratic institutions for its legitimacy.”<sup>62</sup> He proposes that *accountability* within private environmental governance may not be as important as it is in public governance because private governance does not rely on “the coercive power of government.”<sup>63</sup> The same argument may be valid for *effectiveness*. A public command, which burdens individual liberties, may be unjustified if it is ineffective. A parallel private action arguably has no (or at least more limited)

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56. See, e.g., *id.* at 168 (noting that NGOs not only publicize but also collaborate to form standards and labeling systems).

57. *Id.*

58. *Id.* at 169.

59. *Id.* at 169-70.

60. Vandenberg, *Private Environmental Governance*, *supra* note 1, at 170.

61. *Id.*

62. *Id.* at 171.

63. *Id.*

impacts on private liberty, that is, fewer individual costs, and therefore does not demand the same proof of effectiveness. But there is no similar argument for why private governance—simply because it is private—should escape the need for *legitimacy*. Whether public, private, or somewhere between, an act that impacts the public interest should have some legitimacy: some claim to being a valid exercise of control.

Professor Vandenberg, of course, has not ignored the issue of legitimacy. In his 2007 article Vandenberg describes the way that NGOs can perform a legitimizing function by facilitating public participation.<sup>64</sup> This is especially true when NGOs are in a combative role, wielding and influencing consumer pressures.<sup>65</sup> In 2018, with the recognition that NGOs play a wider variety of roles, including as collaborators, there may be some concern that their ability to counterbalance corporate practices is softened.

In fact, it is not only the NGO-corporate relationship that can soften, or otherwise impact, NGO effectiveness. The legal or private governance tools an NGO prefers can also impact NGO success. Professors Sarah Light and Eric Orts have recently offered a more normative approach to private environmental governance, fitting it into a toolbox of environmental protection options, and offering normative considerations for utilizing those tools.<sup>66</sup> Through their analysis, Light and Orts describe NGOs as independent agents and independent participants in private environmental governance who must make their own choices about legitimizing, undermining, facilitating, or otherwise influencing private environmental governance.<sup>67</sup>

The thrust of Light and Orts' work is that, when considering policy instruments for environmental protection, both public governance and private governance offer parallel instruments, but the similarity of instruments should not imply similar

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64. Vandenberg, *Wal-Mart*, *supra* note 1, at 957-58.

65. *Id.* at 958.

66. *See generally* Light & Orts, *supra* note 3.

67. *See id.* at 53-54, 56 (“[O]ur analysis highlights the complexity of *who* is doing the choosing among governance options. . . . [T]here is no . . . single ‘chooser.’ Instead, there are often many ‘choosers’—including government regulators (at multiple levels of government), NGOs, private business firm managers, and individuals acting in their capacities as both citizens and consumers. And these diverse ‘choosers’ are acting simultaneously, sometimes in concert, and sometimes not.” Likewise, “[i]ncluding private environmental governance in the menu of options suggests that additional normative considerations must also be weighed, including . . . *legitimacy*.”).

consequences.<sup>68</sup> Private governance introduces not only new instruments, but also new “choosers[,]” and it is important to consider “*who* is doing the choosing among governance options.”<sup>69</sup> The nature of both the chooser and the instrument has impacts on “accountability and transparency, legitimacy, transnational consequences, durability and adaptability, and expressive content.”<sup>70</sup>

NGOs, Light and Orts explain, are not merely influencers of private environmental governance, they are also private environmental governance actors.<sup>71</sup> NGO policies are private environmental governance policies.<sup>72</sup> In other words, NGOs are agents within the private environmental governance framework just as corporations are. By underscoring that NGOs are private actors with meaningful agency, Light and Orts shift the way we should look at the role of NGOs. It is not simply about how NGOs relate to corporations but also the instruments that NGOs prefer, the actors that NGOs target, the tactics that NGOs use. In short, it is about the “expressive content” of the decisions that NGOs make as independent agents.<sup>73</sup>

This article offers a framework for assessing how NGOs, as private agents, approach these issues of instrument choice, tactics, and targets. But before sifting to that assessment, it is important to look at the non-legal scholarship<sup>74</sup> on NGO participation in private environmental governance, and to consider how that work relates to the current analysis.

## B. The Non-Legal Literature

Much of the early research into NGO environmental strategies came from political science<sup>75</sup> but has recently become

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68. *Id.* at 53-54.

69. *Id.* at 10.

70. *Id.* at 5.

71. Light & Orts, *supra* note 3, at 3.

72. *Id.* at 9.

73. *Id.* at 56.

74. Edward L. Rubin, *Passing Through the Door: Social Movement Literature and Legal Scholarship*, 150 U. PA. L. REV. 1, 3 (2001).

75. Lettie M. McSpadden & Paul J. Culhane, *The Strategies and Tactics of Interest Groups: The Case of the Environmental and Energy Policy Arena*, 27 SE. POL. REV. 223, 223-24 (1999).

prevalent in the management and organizational behavior fields.<sup>76</sup> One important benefit of this literature is that it offers a series of typologies that can help classify individual NGOs and therefore understand their general character. Perhaps as a natural consequence of the distinct disciplines, political scientists have created typologies based on the behavior of different organizations<sup>77</sup> while the business experts focus more on relationships and networks, particularly networks that link NGOs to corporations.<sup>78</sup>

In their 1999 study of environmental NGOs, professors Lettie McSpadden and Paul Culhane asked whether different types of NGOs used different strategies and tactics.<sup>79</sup> They divided NGOs into public interest groups (on which this article focuses exclusively), trade associations, and professional-governmental associations.<sup>80</sup> (This third grouping, while seemingly including governmental organizations, is in fact a group of professional associations including those associations, such as the National Association of Local Air Pollution Control Officials, that are made up exclusively of government employees but are not official governmental organizations.)<sup>81</sup> McSpadden and Culhane concluded that environmentalist organizations primarily rely “on aggressive litigation and administrative intervention tactic, with informational activity focused on Congress as their second most important strategy.”<sup>82</sup>

This conclusion is, or was in 1999, probably a reasonable aggregate characterization of environmental advocacy groups when compared to trade and professional associations. McSpadden and Culhane reached this conclusion by surveying groups and asking them to fit their tactics into a predetermined list.<sup>83</sup> That list, however, did not include options such as

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76. See Hoffman & Bertels, *supra* note 14, at 62; see generally Stephanie Bertels et al., *The Varied Work of Challenger Movements: Identifying Challenger Roles in the US Environmental Movement*, 35 ORG. STUD. 1171 (2014) [hereinafter Bertels et al., *Challenger Movements*]; Andrew J. Hoffman, *Shades of Green*, SANFORD SOC. INNOVATION REV., Spring 2009, at 40 [hereinafter Hoffman, *Shades of Green*].

77. See, e.g., McSpadden & Culhane, *supra* note 75, at 228.

78. See generally, e.g., Bertels et al., *Challenger Movements*, *supra* note 76.

79. McSpadden & Culhane, *supra* note 75, at 224.

80. *Id.* at 228.

81. *Id.*

82. *Id.* at 239.

83. *Id.* at 229.

“collaborate with the private sector.”<sup>84</sup> Even if the questionnaire had been more inclusive, the purpose of the study was to see if an *a priori* typology of NGOs into public interest, trade, and professional categories would uncover distinctive tactics.<sup>85</sup> It therefore intentionally avoids a more nuanced look specifically within the public interest type. More recent research in organizational behavior, however, provides this closer look at public interest environmental NGOs.

Andrew J. Hoffman, an expert in organizational behavior, is one of the leading scholars to examine the role of NGOs in private environmental governance.<sup>86</sup> In three related papers, Professor Hoffman and collaborators (in particular, Professor Stephanie Bertels) define a network of environmental NGOs, analyze the connections in that network, and create a typology to understand the variety of NGO/corporate relationships.<sup>87</sup>

While McSpadden and Culhane characterize public interest environmental NGOs as “aggressive,”<sup>88</sup> Professor Hoffman attempts to go several steps beyond this generalization. In his 2009 study, *Shades of Green*, Hoffman begins by noting that most people do not see a monolithic NGO community, but instead believe that environmental NGOs have “split into two camps, one that partners with businesses and the other that doesn’t.”<sup>89</sup> Even this distinction, he argues, is “too simplistic.”<sup>90</sup>

*Shades of Green* seeks to overcome the simplistic view of environmental NGOs and proposes that an investigation of “the environmental movement through a network lens” is more useful.<sup>91</sup> Thus, using a network mapping software package, Professor Hoffman produced two maps, “one showing the relationships that ENGOS have with individual corporations and

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84. McSpadden & Culhane, *supra* note 75, at 230 tbl.2.

85. *Id.* at 228.

86. See *Faculty Directory: Andy Hoffman*, UNIV. MICH. ROSS SCH. BUS., <https://michiganross.umich.edu/faculty-research/faculty/andy-hoffman> [<https://perma.cc/9MET-Y24E>].

87. Bertels et al., *Challenger Movements*, *supra* note 76; Hoffman, *Shades of Green*, *supra* note 76; Hoffman & Bertels, *supra* note 14.

88. McSpadden & Culhane, *supra* note 75, at 239.

89. Hoffman, *Shades of Green*, *supra* note 76, at 40.

90. *Id.*

91. *Id.* at 42.

the other showing the relationships ENGOs have with various industry sectors.”<sup>92</sup>

These maps detail five types of environmental NGOs.<sup>93</sup> “Isolate” NGOs are those that do not have any corporate connections, they are “outside the corporate network.”<sup>94</sup> This is the single largest category in Hoffman’s typology despite the fact that isolation may limit an NGO’s “ability to influence corporate activity directly.”<sup>95</sup> Isolation does create a “sense of purity” that can strengthen the isolate’s message and make these groups “the compass by which the movement can guide itself.”<sup>96</sup> Examples of Isolates include Greenpeace and the League of Conservation Voters, which, although they occupy a similar position in the network, are in this position for different reasons.<sup>97</sup> Hoffman argues that Greenpeace is isolated because it wants to take an oppositional position, while the League of Conservation Voters is isolated because it wants to maintain impartiality and objectivity in its political analysis.<sup>98</sup>

“Mediators” are those NGOs both at the center of the corporate network and that have ties to many different industrial sectors.<sup>99</sup> This group may not be the largest, but it does include the largest NGOs such as TNC and the Environmental Defense Fund.<sup>100</sup> These are the groups that “tend to be more pragmatic than others, fully engaging the corporate community through tight connections in the network.”<sup>101</sup> Hoffman believes that these mediator NGOs are the ones “most able to accomplish broad-scale changes within the corporate sector.”<sup>102</sup>

Those NGOs that, like mediators, are central to the corporate network but, unlike mediators, are tied only to a few industrial

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92. *Id.*

93. *Id.*

94. Hoffman, *Shades of Green*, *supra* note 76, at 46.

95. *Id.*

96. *Id.* at 46-47.

97. *Id.* at 47.

98. *Id.*

99. Hoffman, *Shades of Green*, *supra* note 76, at 47.

100. *Id.*

101. *Id.*; *see also* Galperin, *Trust Me*, *supra* note 49, at 435-36 (challenging the use of the term “pragmatic” as applied to activist organizations, critiquing the practice of self-described pragmatic activists, and offering a constructive framework for developing more effective and more pragmatic environmental activism.)

102. Hoffman, *Shades of Green*, *supra* note 76, at 47.



sectors, are called “bridge” NGOs.<sup>103</sup> These bridges receive influence from specific sectors but can transmit that influence widely within the NGO community.<sup>104</sup> The Rainforest Alliance and Center for Clean Air Policy are examples.<sup>105</sup> The Center for Clean Air Policy, for instance, maintains close ties with the energy sector, but only that sector, thereby offering a specialized knowledge into the network.<sup>106</sup>

“Independent” NGOs are on the outside of the corporate network, having limited corporate relationships, but the relationships they do have are with a variety of sectors.<sup>107</sup> These NGOs have the capacity to develop innovative solutions insofar as they are not tied too closely to any one perspective.<sup>108</sup> However, independents such as Rainforest Action Network and American Forests may not have the NGO connections to popularize their innovations and therefore need to work with more connected organizations such as the mediators.<sup>109</sup>

The final type of NGO in Hoffman’s analysis is the “captive.”<sup>110</sup> The captives are on the edge of the network, having only a few corporate partnerships, which makes them similar to the independents, but unlike the independents, their partnerships are all within the same industry sector.<sup>111</sup> Captives are primarily the hunting- and fishing-focused NGOs,<sup>112</sup> though some surprises, such as the Sierra Club, are also in this category.<sup>113</sup> The network independence but limited set of sectoral ties allows captives to be independent but also more easily influenced by their limited relationships.<sup>114</sup> As such, these groups can have significant influence on a sector, which allows for localized innovation, but they may not have the means to diffuse that innovation more widely.<sup>115</sup>

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103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. Hoffman, *Shades of Green*, *supra* note 76, at 47.

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. Hoffman, *Shades of Green*, *supra* note 76, at 47.

113. *Id.* at 46.

114. *Id.* at 48.

115. *Id.*

In 2010, Hoffman and Professor Stephanie Bertels put this network analysis in more context as they sought to answer the question: who is part of the environmental movement.<sup>116</sup> Despite the nuances and heterogeneity of the movement, Hoffman and Bertels still see a general schism between those that “define their identity in terms of a conflict orientation to corporations and corporate activities” and those with a “consensus orientation with business and the capitalist system.”<sup>117</sup> This schism may, in fact, be widening.<sup>118</sup> But this schism is not without its strategic benefits. For instance, breaking the environmental movement into two broad camps of collaboration and confrontation, or moderate and radical, does allow a “flank effect.”<sup>119</sup> Ideally, the flank effect would work to build trust in the moderate NGOs, allowing them to appear more legitimate and more moderate in comparison to the radical flank, thereby creating leverage for consensus.<sup>120</sup> However, the effect can backfire, and the targets of NGO action, such as corporations, might characterize all NGOs by the most polarizing actions of the radical flank, thereby making any agreements more challenging.<sup>121</sup>

While the strategic analysis of the flanking effect roughly categorizes environmental NGOs into just two camps, Hoffman and Bertels argue that it is still “best to think of the movement as a series of intertwined networks composed of a diverse array of actors.”<sup>122</sup> Appreciation of the network of environmentalism allows analysis not just of bipolar flanks, but of the nature of connections within those flanks and how those connections influence behavior.<sup>123</sup>

More recently, professors Bertels and Hoffman offered another typology, this time looking not at NGOs as nodes in a corporate network, but as institutional challengers.<sup>124</sup> In *Shades of Green* Hoffman and Bertels argued that environmental organizations are all part of a network, but can be understood

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116. Hoffman & Bertels, *supra* note 14.

117. *Id.* at 62.

118. *Id.*

119. *Id.* at 62-63.

120. *Id.* at 63.

121. Hoffman & Bertels, *supra* note 14, at 62-63.

122. *Id.* at 66.

123. *Id.*

124. Bertels et al., *Challenger Movements*, *supra* note 76.

better based on their location in that network.<sup>125</sup> In *The Varied Work of Challenger Movements: Identifying Challenger Roles in the U.S. Environmental Movement*, they argue that another important analytical perspective is that “organizations within the environmental movement are all challenging longstanding institutions in the pursuit of environmental protection . . . [but] there are differences in what they do, with whom they interact, and how they understand or present themselves.”<sup>126</sup> Bertels and Hoffman then take their findings about the types of challenger work that NGOs do and integrate it with the earlier analysis of NGO-corporate networks.<sup>127</sup>

This synthesis produced another typology, which is based on the network position, identity, and work of environmental NGOs.<sup>128</sup> The categories in this typology are portal, coordinator, member, fringe player, and purist.<sup>129</sup> Portals are groups at the center of the environmental network, who identify themselves as “professionals of the environmental movement,” and see their work as varied, but with significant focus on attempting to engage corporations in facilitative change.<sup>130</sup> Coordinators are similarly connected to the full network but less through their corporate connections than through their other NGO connections.<sup>131</sup> The coordinators also identify themselves as professionals, but unlike the portals they see their work as more disruptive than collaborative.<sup>132</sup> Members are centrally networked as well, but their identity is issue specific rather than broadly environmental.<sup>133</sup> Given their more limited issue identification, the work of the members is more centered on information and local campaigning around their key issues.<sup>134</sup>

The remaining two categories are purists and fringe players.<sup>135</sup> These groups are related in their network position because both are satellites, completely or mostly unconnected

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125. Hoffman, *Shades of Green*, *supra* note 76, at 42.

126. Bertels et al., *Challenger Movements*, *supra* note 76, at 1172.

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.* at 1193.

131. Bertels et al., *Challenger Movements*, *supra* note 76, at 1194.

132. *Id.*

133. *Id.* at 1195.

134. *Id.*

135. *Id.* at 1195-96.

from the rest of the environmental network.<sup>136</sup> They differ in their identity and work.<sup>137</sup> The purists identify as intentionally disconnected, as “independent, and challenging the power and actions of institutional incumbents (in this case, corporations).”<sup>138</sup> As such, their work is disruptive, “focused on questioning or undermining the moral foundations that are considered appropriate in a particular cultural context.”<sup>139</sup> Fringe players, on the other hand, identify themselves as more mainstream players, and are therefore unintentionally unconnected to the rest of the network.<sup>140</sup> Their work is more limited, but usually disruptive,<sup>141</sup> which may be a consequence of their inability—through disconnection—to be more collaboratively influential.

This work from Bertels and Hoffman provides an important synthesis of the earlier research into the role of environmental NGOs. While the earlier political science approaches to NGOs focus on NGO actions<sup>142</sup> and Hoffman’s individual project assessed networking,<sup>143</sup> this latter effort combined network positioning, and, importantly, organizational self-identity.<sup>144</sup> The qualitative notion of self-identity links this literature back to the legal scholarship, which more conceptually and normatively describes the roles of NGOs in pursuing legal instrument selection.<sup>145</sup> That is, the non-legal literature identifies the importance of self-description alongside more fixed variables such as connectivity. The legal literature then provides NGOs with a rich analysis of the two variables they can more fully and directly control, rhetoric and legal instrument selection.

Of course, rhetoric and instrument selection can also influence connectivity, particularly corporate connectivity. Hoffman and Bertels point out that it is the corporate targets of NGO action that decide “who is a legitimate representative for environmental concerns.”<sup>146</sup> Those groups that define themselves

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136. Bertels et al., *Challenger Movements*, *supra* note 76, at 1195.

137. *Id.*

138. *Id.*

139. *Id.* at 1196.

140. *Id.*

141. Bertels et al., *Challenger Movements*, *supra* note 76, at 1192, Table 7.

142. *See, e.g.*, McSpadden & Culhane, *supra* note 75.

143. Hoffman, *Shades of Green*, *supra* note 76, at 42.

144. Bertels et al., *Challenger Movements*, *supra* note 76, at 1172.

145. *See* discussion *infra* Section II.A.

146. Hoffman & Bertels, *supra* note 14, at 52.

as collaborative and professional as opposed to challenging and radical are more likely to attract corporate engagement.<sup>147</sup> But legitimacy in the eyes of a target industry or corporation can undermine legitimacy within the larger environmental movement. “Through steady interaction, NGOs can find themselves aligning more with the corporations they are trying to influence than the causes to which they were originally attached.”<sup>148</sup> Legitimacy in the eyes of a target industry can also possibly undermine efficacy. Through repeated commitment to certain strategies and tactics—to certain legal instruments—“members of social movements may develop a preference for particular tactics or strategies, which may be partly independent of their efficacy.”<sup>149</sup>

All of this indicates that productive NGO efforts require an incredibly detailed and nuanced study of NGO practices. We must understand NGOs vis-à-vis their corporate targets and partners, as independent agents who promote certain legal instruments, as participants in a robust network of influencers and actors, and, more subtly, as story tellers. Environmental decisionmaking is ethical decisionmaking and as such, there are no value-free or value-neutral “easy answers.”<sup>150</sup> Every NGO, therefore, has “responsibilities in crafting stories of more (or less) sustainable business practices.”<sup>151</sup> These stories help to develop a shared understanding of environmentalism and the relationship between NGOs and private environmental governance. In demonstrating the heterogeneity of environmentalism, particularly with respect to private environmental governance, all of this research illustrates that we have not yet reached a shared understanding (or perhaps we have lost the shared understanding that once existed.)

“[S]hared understandings . . . legitimate and motivate collective action.”<sup>152</sup> Thus, while there is no need for environmental NGOs to agree on ethics, on instruments, on the role of corporate players, it is essential to have a framework for

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147. *Id.*

148. *Id.* at 66.

149. Bertels et al., *Challenger Movements*, *supra* note 76, at 1175.

150. Sharon M. Livesey et al., *Performing Sustainable Development Through Eco-Collaboration: The Ricelands Habitat Partnership*, 46 J. BUS. COMM. 423, 446-47 (2009) [hereinafter *Performative Sustainable Development*].

151. *Id.*

152. Bertels et al., *Challenger Movements*, *supra* note 76, at 1173.

understanding the practices of the varied players in the environmental movement. The literature so far brings us very far along the path of understanding, but we still have further to go.

### III. A FRAMEWORK FOR ASSESSING NGO ACTIVISM

The purpose of this article is to move us one step further down the path of understanding. The non-legal literature has already developed extensive descriptive analysis and typologies of NGO action in the field of private environmental governance. The legal literature has already offered conceptual narratives. This article is a first attempt at splitting the difference. Rather than creating a typology or categorization that looks backwards to describe NGOs, I want to offer a system for analyzing individual NGOs more contemporaneously. This system is not designed to sort NGOs by strategy or compare their relative efforts. Instead, the system is a uniform method for assessing individual NGOs. Through that uniformity we will ideally have a shared language for considering environmentalism and the role of NGOs in private environmental governance.

This NGO assessment framework is made up of four simple categories: (1) Goal; (2) Governance Priority; (3) Target of Change; and (4) Key Tactics. (See Table 1). These categories are meant to reflect the dominant areas of prior research, to fill in gaps in that research, and to offer a high-level but meaningful swath of variables.

Table 1: Overview of Assessment Framework

GOAL	GOVERNANCE PRIORITY	TARGET OF CHANGE	KEY TACTICS
Nature	Public or Private	Polymakers	Litigation
Human Health	Prescription	(administrative)	Research
Economic	Markets	Polymakers (elected)	Policy advocacy
Growth	Property	Industry/Business	Consulting/
Peace	Information/ Transparency	Individuals (as voters)	Collaboration
		Individuals (as environmental actors)	Public/Media
			Outreach
			Direct Action
			Info Sharing
			Market Influence
			Market Participation

*Goal.* This category augments the existing research by forcing attention to an organization's existential purpose.<sup>153</sup> The goal is a high-level statement that summarizes the ultimate commitment of the organization. For instance, the goal might include "protecting nature," "advancing economic growth," "defending human health," or "assuring peace," among many other possibilities.

*Governance Priority.* Governance priority, which might also be called "governance strategy," recognizes that in striving for its ultimate goal, an organization will have a number of high-level options for working towards that goal. As Professor Vandenberg defines it, "governance" is simply a restriction on behavior.<sup>154</sup> In working towards "protecting nature" for example, we should ask what sort of restrictions on behavior a group prioritizes. This choice of restriction need not be the sole mechanism for progress, but it should be the one or two that an organization most clearly prioritizes.

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153. See, e.g., sources cited *supra* Section II, which review practical aspects of NGO operations including relationships, tactics, network centrality, and self-identity, but not mission statements or organizational charters.

154. Vandenberg, *Wal-Mart*, *supra* note 1, at 916.

Drawing on Light and Ort's description of public and private governance as utilizing parallel tools,<sup>155</sup> this category first assesses whether an NGO prioritizes public or private governance and then asks which more specific public or private governance instruments an NGO favors. The more specific instruments within both the public and private governance options are a slightly condensed version of Light and Ort's menu.<sup>156</sup> For this framework, the parallel instruments are prescription, markets, property rights, and transparency.

Prescription is "mandatory duty-imposing rules that govern behavior directly."<sup>157</sup> In public governance this covers the majority of traditional "command and control" strategies including performance standards and technology standards.<sup>158</sup> In private governance it includes intra-firm rules, industry-wide rules, and third-party certification schemes that mandate specific performance or processes to earn certification.<sup>159</sup>

Markets include public or private tools for modifying the behavior of firms in existing markets<sup>160</sup> and creating entirely new markets.<sup>161</sup> This consideration merges several of the instruments that Light and Orts broke out separately.<sup>162</sup> Thus, taxes, charges, fees, subsidies, and tradable permit regimes are all within this bucket. On the public side, taxes, charges, and fees amount to public incentives for more environmentally friendly private behavior.<sup>163</sup> In private governance, firms can use these same instruments to promote or restrict intra-firm practices.<sup>164</sup> Subsidies, in both public and private governance, are simply the inverse of taxes, charges, and fees, offering a financial benefit for good behavior rather than a cost for bad behavior.<sup>165</sup> Tradable permit regimes, in public and private governance, create new

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155. Light & Orts, *supra* note 3, at 4-5.

156. *Id.* at 23.

157. *Id.* at 24

158. *Id.*

159. *Id.* at 25-26. Strictly speaking, in the private sphere these are not truly prescriptive as they are always voluntary insofar as any firm can change its own rules or exit larger industry and certification schemes at their pleasure.

160. Light & Orts, *supra* note 3, at 33.

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.* at 34.

165. Light & Orts, *supra* note 3, at 35.



markets by setting and distributing a limited number of allowances for a given behavior and allowing firms or units within a firm to buy and sell these allowances depending on their marginal costs.<sup>166</sup>

Although tradable permits mimic or create property rights, in this framework I treat property rights as a separate instrument. The idea of private property as an environmental protection instrument is that private ownership will help avoid the tragedy of the commons.<sup>167</sup> In public governance, property rights primarily emerge when the government itself holds land such as National Parks.<sup>168</sup> The line is fuzzier when governments allow private individuals to assert publicly-granted rights in private property.<sup>169</sup> For instance, an individual can exclude others from her land because the government has created the private right to exclude, and she can use public institutions such as the courts to enforce this exclusion.<sup>170</sup> Despite the public involvement, for these purposes it is typical to consider private ownership of environmental resources to be private governance unless the government has specifically created a new type of property as is the case with trading regimes.

Transparency is the final governance strategy option. As an environmental protection tool, transparency leverages information and reputation to influence market decisions.<sup>171</sup> Whether through disclosure of environmental practices, labeling regimes that signal a set of environmental commitments, or rankings and awards that name and shame based on environmental performance, both consumers and producers may behave differently based on a more transparent view of environmental impacts.<sup>172</sup> Public efforts at transparency typically create mandatory disclosures, such as those required by the National Environmental Policy Act,<sup>173</sup> or voluntary but publicly organized labeling systems like the National Organic Program.<sup>174</sup>

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166. *Id.* at 37.

167. *Id.* at 29.

168. *Id.* at 29-30.

169. *Id.* at 29.

170. Light & Orts, *supra* note 3, at 29.

171. *Id.* at 39.

172. *Id.* at 39-40.

173. *Id.* at 42-43.

174. *Id.* at 44.

Private industry has created similar structures, including Wal-Mart's requirement for certain supplier disclosures<sup>175</sup> and industry-wide voluntary labeling opportunities such as LEED certification.<sup>176</sup>

*Target of Change.* This category asks which changemakers an NGO targets to achieve its goal. In pursuit of overarching goals, NGOs must identify the key players who can help implement their preferred governance strategy. Although they will frequently have several targets, NGOs are likely, through their rhetoric and practice, to attend to only a limited number of changemakers.<sup>177</sup> In this assessment I identify four possible targets of change: (1) The Electorate; (2) Policymakers; (3) Corporations; and (4) Individuals. The electorate, that is, individuals in their capacity as political actors, can be powerful changemakers through their votes. Policymakers, both elected and appointed (that is, administrative officials), are a narrower set of targets who have more direct control over public environmental policy. Corporations and corporate leadership have large and direct influence over many environmental concerns. Finally, individuals not as political actors, but as individual environmental actors, are also frequent targets of change. Here, NGOs target individuals for private behavioral changes such as reducing their energy use, recycling, limiting their water use, and so forth.

*Key Tactics.* The final area of assessment in this framework is the tactics on which an NGO chooses to rely. An NGO's tactics are the way it carries out its goals. While governance strategy points to its more philosophical preferences, and target of change identifies the source of change, tactics looks at the specific tools and procedures that an NGO implements. This is the most diverse variable among the four that make up this framework. It includes methods such as litigation, policy advocacy, consulting and collaboration, public and media outreach, direct action,

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175. Light & Orts, *supra* note 3, at 42.

176. *Id.* at 45.

177. Jane Nelson, *The Operation of Non-Governmental Organizations (NGOs) in a World of Corporate and Other Codes of Conduct 2* (Harvard Univ. Corp. Soc. Responsibility Initiative, Working Paper No. 34), [https://sites.hks.harvard.edu/m-rcbg/CSRI/publications/workingpaper\\_34\\_nelson.pdf](https://sites.hks.harvard.edu/m-rcbg/CSRI/publications/workingpaper_34_nelson.pdf) [<https://perma.cc/6HTU-AVQT>].

information sharing, market influence, market participation, and scientific research.

#### IV. METHODS

This article demonstrates and tests this new framework by applying it to a small but diverse set of environmental NGOs. Although I selected the NGOs non-randomly to provide an interesting sample, the methods for assessing how each NGO fits within this framework are consistent in order to make it easily replicable. In this section I will briefly describe the sample set of NGOs and then more fully explain my methods for gathering and assessing the data.

##### A. The NGOs

To test the new NGO assessment framework I look at eight United States based NGOs that represent a spectrum of reputations, rhetoric, and realities. (The full list is available in Table 2 along with web addresses for each NGO'. The logos for each NGO are presented in Figure 1).

Figure 1: Logos of the Eight NGOs in this Analysis



Given the comparison at the outset of this article, Greenpeace and TNC bookend the sample as they are examples of large, well-known, organizations with distinctly different reputations.<sup>178</sup> Within the traditional, mainstream, policy-based, community I have selected the Natural Resources Defense Council (NRDC) and the Environmental Defense Fund (EDF). These NGOs are among the largest by revenue, the oldest—having both been founded at the emergence of the modern environmental movement in the late 1960s and early 1970s—and both are well-connected with federal policy leaders.<sup>179</sup> The League of Conservation Voters (LCV) and the Union of Concerned Scientists (UCS) are on the list to represent important environmental NGOs with more unique specializations and focus than the likes of EDF and NRDC.<sup>180</sup> Each identifies special aspects in their work, respectively, electoral politics and scientific solutions.<sup>181</sup> Sierra Club and 350.org round out the sample. I pair these organizations because they represent grassroots activism and public engagement as primary identifications<sup>182</sup> but also because the Sierra Club is the nation's oldest environmental group, founded in 1892,<sup>183</sup> and 350.org is among the newest, founded in 2007.<sup>184</sup>

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178. See, e.g., sources cited *supra* notes 4-10.

179. See, e.g., *Shades of Green: A Movement at Midlife*, E&E NEWS, [https://www.eenews.net/special\\_reports/shades\\_green](https://www.eenews.net/special_reports/shades_green) [<https://perma.cc/LM56-9635>].

180. *About Environmental Defense Fund*, *supra* note 53; *About LCV*, LEAGUE CONSERVATION VOTERS, <https://www.lcv.org/about-lcv/> [<https://perma.cc/A2Q3-C5F7>]; *About Us*, NAT. RESOURCES DEF. COUNCIL (hereinafter NRDC, *About Us*), <https://www.nrdc.org/about> [<https://perma.cc/PD7R-QS95>]; *About Us*, UNION CONCERNED SCIENTISTS [hereinafter UCS, *About Us*], <https://www.ucsusa.org/about-us#.WsQ3HHeZPdc> [<https://perma.cc/4MSB-LNEA>].

181. *Mission*, LEAGUE CONSERVATION VOTERS, <https://www.lcv.org/mission/> [<https://perma.cc/68EF-9J3L>] [hereinafter *LCV Mission*]; UCS, *About Us*, *supra* note 180.

182. *About the Sierra Club*, SIERRA CLUB, <https://www.sierraclub.org/about> [<https://perma.cc/4GP3-HVT7>]; *About 350*, 350.ORG, <https://350.org/about/> [<https://perma.cc/6YT3-VLNC>].

183. *Shades of Green: A Movement at Midlife*, *supra* note 179.

184. *Id.*

Table 2: NGO Sample Set and Websites

<b>The Nature Conservancy</b>	<a href="https://www.nature.org/">https://www.nature.org/</a>
<b>Greenpeace USA</b>	<a href="http://www.greenpeace.org/usa/">http://www.greenpeace.org/usa/</a>
<b>Environmental Defense Fund</b>	<a href="https://www.edf.org/">https://www.edf.org/</a>
<b>Natural Resources Defense Council</b>	<a href="https://www.nrdc.org/">https://www.nrdc.org/</a>
<b>League of Conservation Voters</b>	<a href="https://www.lcv.org/">https://www.lcv.org/</a>
<b>Union of Concerned Scientists</b>	<a href="https://www.ucsusa.org/">https:// www.ucsusa.org/</a>
<b>Sierra Club</b>	<a href="https://www.sierraclub.org/">https://www.sierraclub.org/</a>
<b>350.Org</b>	<a href="https://350.org/">https://350.org/</a>

These organizations are only a small sample of those active and effective within the environmental movement. The purpose here is not to offer a comprehensive analysis of the NGO community and their approaches to private environmental governance, but to present a small sample that will demonstrate the workability and value of the new framework offered in this article.

### B. Data Gathering and Analysis

The data for this analysis comes exclusively from the websites of the subject NGOs. Although the information presented on websites probably does not present the most objective picture of each organization,<sup>185</sup> it allows for consistent data gathering and it recognizes the important subjective aspects of NGO activism. Speaking to both the subjectivity and communicative value of how NGOs represent themselves,

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185. Kirstin Munro, *Hegemonic Stories in Environmental Advocacy Testimonials*, 31 ENERGY RES. & SOC. SCI. 233, 233 (2017).

Professor Sharon Livesey and colleagues explain that the “power of language” NGOs use to describe themselves is “constitutive rather than simply reflective of realities.”<sup>186</sup>

Websites for environmental organizations seem to be consistently organized. To create a regular process for gathering similar data on each organization, I assigned specific website pages as data sources for each specific category within the framework. To gather language about an NGO’s goal, I reviewed the mission statements and “about us” pages. To understand each governance strategy, I looked again at mission statements and “about us” pages, but further considered the way organizations describe their specific program areas and the victories that they choose to highlight.

Typically, in each program area an NGO will describe the goal of the program—for example, to protect public lands or advance renewable energy technologies—and will specify the specific strategies for achieving those goals.<sup>187</sup> These strategies are identifiable as public or private and then as prescriptive, market-, property-, or transparency-based. Looking at victories provides similar insight except that it not only shows what NGOs have achieved and how they have achieved it, but what particular types of victories (for instance, public or private) they decide to highlight and which strategies they credit for achieving the victory. Through victories we can get a particularly clear view of the stories that NGOs tell about themselves.

I gathered data for target of change by looking at active, ongoing campaigns. Because victories only paint a picture of what has worked in the past, they tell stories perhaps of the best targets, but they cannot as precisely demonstrate who NGOs chose to target at the outset of a project. NGOs often describe their current efforts by pointing to the changemakers they are targeting.<sup>188</sup> Finally, for key tactics I look again to active campaigns to search for the specific tools mentioned therein. I also look again to the “about us” pages, which almost always

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186. Livesey et al., *supra* note 150, at 425.

187. See e.g., *About*, AM. COUNCIL ON RENEWABLE ENERGY, <https://acore.org/what-we-do/> [<https://perma.cc/GAX5-QK5U>]; *About World Land Trust*, WORLD LAND TRUST, <http://www.worldlandtrust.org/about/index> [<https://perma.cc/Y49M-R9KA>].

188. See e.g., *About LCV*, *supra* note 180.

describe each NGO based on its favored, or most unique, tactics and tools.

Across each category I relied primarily on these consistent sources but did not avoid drawing data from other sources where it was explicit or especially emphasized. In some cases the front banner on a website, consistent introductory language, or repeated links would point to data that was clearly relevant for better understanding an NGOs behaviors. Naturally this process leaves room for researcher bias. I reviewed findings with a research assistant in an attempt to minimize this.

## V. FINDINGS

Unlike the existing typologies, the framework and the method of analysis described above does not try to categorize environmental NGOs. Instead, it facilitates an efficient characterization of environmental NGOs. A categorization or typology creates a limited number of pre-determined boxes, which is useful for comparing a large number of entities, while characterization is a more flexible tool for more nuanced assessment of a smaller number of entities. Of course, every NGO in this assessment plays a number of roles, has a broader strategy than just what is presented below, is willing to target many different changemakers, and employ tactics from a very diverse toolbox. This is one reason a more flexible characterization, even while imperfect, can offer some insights that categorization cannot.

Even in placing blinders on a more holistic view of NGO behavior, by forcing a more cabined assessment, this framework for characterization is buoyed by social science research. The research suggests that NGOs struggle to fruitfully play multiple roles.<sup>189</sup> Identifying only a few roles may help NGOs understand where to focus. Research further underscores the importance of rhetoric and discourse.<sup>190</sup> By translating the repeated and outstanding rhetoric into this framework, it can help NGOs better understand their own signaling and that even when they try to play multiple roles, often only one or two will rise to the top.

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189. Bertels et al., *Challenger Movements*, *supra* note 76, at 1200.

190. Livesey et al., *supra* note 150, at 425.

The next part of this section will briefly describe the application of this new framework to the eight sample NGOs. The final part will offer a summary analysis of the findings.

## A. The Framework Applied

### 1. *The Nature Conservancy*

*Goal.* TNC describes its work as “protecting nature, for people today and future generations,” and its mission “is to conserve the land and water on which all life depends.”<sup>191</sup> Thus, its twin goals are people and nature.

*Governance Priority.* TNC catalogues its victories under the story of its history.<sup>192</sup> Beginning in 1955 TNC highlights land acquisition as “a key protection tool.”<sup>193</sup> Throughout the remainder of its history section land acquisition is repeated as important victories.<sup>194</sup> In addition to property acquisition (through fee title and easements), TNC also describes the way in which it achieved success by pushing governments to designate land reserves.<sup>195</sup> Its prioritization of land acquisition is likewise evident in the about page, which describes the number of acres of land protected and the diversity of habitats included in this conserved land.<sup>196</sup> Land acquisition is central to only one of the key program areas listed on TNC’s “priorities” page, but it is also the only program area that, in its summary description, actually commits to a specific governance strategy.<sup>197</sup> That is, while other programs speak generally of “working to protect rivers” or “solutions that will reduce emissions,” the “Conserving Land”

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191. *About Us: Vision and Mission*, NATURE CONSERVANCY, <https://www.nature.org/about-us/vision-mission/index.htm?intc=nature.tnav.about> [https://perma.cc/469A-93AJ].

192. *Our History: History & Milestones of The Nature Conservancy*, NATURE CONSERVANCY, <https://www.nature.org/about-us/vision-mission/history/index.htm?intc=nature.tnav.about> [https://perma.cc/7P37-G5RK].

193. *Id.*

194. *Id.*

195. *Id.*

196. TNC, *About Us*, *supra* note 4.

197. *Our Priorities: Addressing Conservation Challenges Around the World*, NATURE CONSERVANCY, <https://www.nature.org/ourinitiatives/urgentissues/index.htm?intc=nature.tnav.ourwork> [https://perma.cc/3HNQ-SCGR].



program area specifically points to the governance strategy—property.<sup>198</sup>

Private governance, through property, is the clear TNC governance priority, though public governance, also through property, in which TNC pushes for new public land conservation, is an important strategy as well.

*Target of Change.* TNC's key targets are, somewhat surprisingly, not directly related to its governance priority. Because TNC can acquire interests in land without significant engagement from other changemakers, TNC's key targets are related to its other priorities, including protecting water and oceans, stabilizing the climate, and improving urban environments.<sup>199</sup> In these areas<sup>200</sup> and as a more overarching principle, TNC elevates its collaborative and “pragmatic” nature.<sup>201</sup> Whether partnering with multinational corporations or farmers and fishermen, TNC's key targets of change are corporate and business actors.<sup>202</sup>

*Key Tactics.* TNC relies on land acquisition and collaborative partnerships as its most prevalent and rhetorically important tactics.<sup>203</sup> TNC describes its “non-confrontational, collaborative approach” on its mission page,<sup>204</sup> it highlights

198. *Id.*

199. *Id.*

200. *Water: Protecting Our Rivers*, NATURE CONSERVANCY, <https://www.nature.org/ourinitiatives/urgentissues/water/protecting-rivers/index.htm?intc3=nature.water.lp.r1c1> [<https://perma.cc/TZZZ-SDZG>] (targeting farmers through agricultural best management practices); *Water: Ensuring There Is Enough Water for All*, NATURE CONSERVANCY, <https://www.nature.org/ourinitiatives/urgentissues/water/enough-water-for-all/index.htm?intc3=nature.water.lp.r1c2> [<https://perma.cc/GN3V-U78H>] (describing water funds and markets); *Water: Ensuring Water in an Urbanizing World*, NATURE CONSERVANCY, <https://www.nature.org/ourinitiatives/urgentissues/water/urban-water-security/index.htm?intc3=nature.water.lp.r1c3> [<https://perma.cc/WY53-BJ6L>] (working with companies to protect urban environments); *Providing Food Sustainably: The Future of Fisheries*, NATURE CONSERVANCY, <https://www.nature.org/ourinitiatives/urgentissues/oceans/providing-food-sustainably/index.htm> [<https://perma.cc/8GPJ-B2YX>] (targeting seafood companies and fishermen).

201. See, e.g., *Working with Companies: Business Council*, NATURE CONSERVANCY, <https://www.nature.org/about-us/working-with-companies/businesscouncil/ilc-main-content.xml> [<https://perma.cc/3RQB-RZF4>]; *Working With Companies: Companies We Work With*, *supra* note 5; *Working With Companies: Making Better Business Decisions for Nature*, NATURE CONSERVANCY, <https://www.nature.org/about-us/working-with-companies/index.htm> [<https://perma.cc/JF2P-NKE9>].

202. *Working With Companies: Business Council*, *supra* note 201.

203. *About Us: Vision and Mission*, *supra* note 191.

204. *Id.*

partnering with businesses on its about us page,<sup>205</sup> it describes its first land acquisition and its first partnership on its history page.<sup>206</sup> TNC's key tactics are distinctly partnership and land ownership.

Table 3

THE NATURE CONSERVANCY			
GOAL	GOVERNANCE PRIORITY	TARGET OF CHANGE	KEY TACTICS
People Nature	Private: Property	Corporate/ Business Leadership	Land Ownership Partnerships

## 2. Greenpeace

*Goal.* Greenpeace USA's mission is, in relevant part, to "promote solutions that are essential to a green and peaceful future."<sup>207</sup> This statement points to the two key organizational goals: green—as in environment—and peace.

*Governance Priority.* Throughout its about page, Greenpeace describes itself as a group of activists.<sup>208</sup> Although this is more descriptive of tactics, it lays the groundwork for their governance priority, which builds off of pressure rather than partnership. A close look at Greenpeace's victories shows their interest in government behavior but their unique focus on the activity of private businesses.<sup>209</sup> Greenpeace's stories focus on their efforts to pressure large corporations in the forest products

205. *TNC About Us*, *supra* note 4.

206. *Our History: History & Milestones of The Nature Conservancy*, *supra* note 192.

207. Greenpeace, *About*, *supra* note 7.

208. *Id.*

209. The public governance focus seems to be tailored to President Trump's administration, having picked up significantly in the past year. Prior victories demonstrate more private governance attention. *Stories & Victories*, GREENPEACE, <http://www.greenpeace.org/usa/stories-victories/#/post-type=victories/> [https://perma.cc/NJ2R-8N3P].

industry,<sup>210</sup> to develop an industry-supported moratorium on Amazonian soy production,<sup>211</sup> to pressure Shell to stop Arctic oil exploration,<sup>212</sup> to remove chemicals from children's toys,<sup>213</sup> and even to develop their own technological innovations for private implementation.<sup>214</sup> Unlike TNC, Greenpeace does not identify its private-sector strategy as a key governance priority (and perhaps Greenpeace does not identify this way because it has not considered its activities in this light). But, in fact, Greenpeace puts significant emphasis on private environmental governance. Also unlike TNC, this analysis shows that Greenpeace prefers those private strategies that Light and Orts identify as prescriptive.<sup>215</sup> Greenpeace's private governance efforts seem to aim for and result in industry-wide standards and intra-firm commitments to stop certain environmentally damaging practices.<sup>216</sup> Greenpeace, therefore, prioritizes private, prescriptive governance.

*Targets of Change.* Greenpeace focuses on three key targets, corporations, policymakers, and individuals, though corporations receive most of the attention.<sup>217</sup> In their effort to protect the Arctic, for example, they urge “telling all companies and governments that the Arctic Ocean—and its oil—is off limits

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210. Daniel Brindis, *The Day I Was Treated Like a Mobster and Served a \$300 Million Lawsuit for Defending Forests*, GREENPEACE, <http://www.greenpeace.org/usa/stories/the-day-i-was-treated-like-a-mobster-and-served-a-300-million-lawsuit-for-defending-forests/> [https://perma.cc/YU7X-JR2P]; *Great Bear Rainforest: A Forest Solution in the Making*, GREENPEACE, <http://www.greenpeace.org/usa/forests/great-bear-rainforest/> [https://perma.cc/5Q35-AEML].

211. *10 Years Ago the Amazon Was Being Bulldozed for Soy—Then Everything Changed*, GREENPEACE [hereinafter *Everything Changed*], <http://www.greenpeace.org/usa/victories/amazon-rainforest-deforestation-soy-moratorium-success/> [https://perma.cc/5VPV-KZ36].

212. Christine Ottery, *Shell a Step Closer to US Government Go-Ahead on Arctic Drilling Plans*, GREENPEACE (Apr. 1, 2015), <http://www.greenpeace.org/usa/shell-step-closer-us-government-go-ahead-arctic-drilling-plans/> [https://perma.cc/SUP2-CC9E].

213. Michelle Frey, *Toxics Banned from Children's Toys*, GREENPEACE (Aug. 14, 2008), <http://www.greenpeace.org/usa/toxics-banned-from-childrens-toys/> [https://perma.cc/CBK7-BATE].

214. *Greenfreeze: Refrigerants, Naturally*, GREENPEACE, <http://www.greenpeace.org/usa/victories/greenfreeze-refrigerants-naturally/> [https://perma.cc/EFD4-YGG7].

215. Light & Orts, *supra* note 3, at 25-26.

216. See, e.g., *Everything Changed*, *supra* note 211; Ottery, *supra* note 212; Frey, *supra* note 213; *Greenfreeze: Refrigerants, Naturally*, *supra* note 214.

217. See, e.g., *infra* notes 218-220 and accompanying text.

forever.”<sup>218</sup> At the same time, they remind individuals that “our spending power can contribute to forest destruction . . . .”<sup>219</sup> In their climate change, oceans, and toxics campaigns, Greenpeace shows the same trio of targets, pressuring companies to do better, urging individuals to act, and demanding that government backstop.<sup>220</sup>

*Key Tactics.* On its “what we’re doing” page, Greenpeace explains that it is “investigating, exposing, and confronting environmental abuse, championing environmentally responsible solutions, and advocating for the rights and well-being of all people.”<sup>221</sup> Investigating and exposing point to information sharing, confronting (in conjunction with other activities described below) indicates direct action, and championing is a form of market influence insofar as it promotes good products and companies to consumers.

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218. *Saving the Arctic*, GREENPEACE, <http://www.greenpeace.org/usa/arctic/> [<https://perma.cc/H3TZ-CUCY>].

219. Brindis, *supra* note 210.

220. *See, e.g., Fighting Global Warming*, GREENPEACE, <http://www.greenpeace.org/usa/global-warming/> [<https://perma.cc/2KBK-3S9Q>] (“Tell J.P. Morgan Chase: don’t fund dirty tar sand pipelines.”); *Living Toxic-Free*, GREENPEACE, <http://www.greenpeace.org/usa/toxics/> [<https://perma.cc/K93D-AM24>] (“Since 2011, we’ve challenged some of the world’s most popular clothing brands . . . .”); *Go PVC-Free*, GREENPEACE, <http://www.greenpeace.org/usa/toxics/pvc-free/> [<https://perma.cc/M6NA-SY94>] (“[T]hanks to everyday consumers demanding change, it is finally becoming less common.”); *Preventing Chemical Disasters*, GREENPEACE, <http://www.greenpeace.org/usa/toxics/preventing-chemical-disasters/> [<https://perma.cc/Q8FF-3935>] (“It’s the responsibility of the U.S. government to mandate that the chemical industry protect those communities.”); *Protecting Our Oceans*, GREENPEACE, <http://www.greenpeace.org/usa/oceans/> [<https://perma.cc/9RW5-NN86>] (“We are calling on big corporations to act . . . .”).

221. *What We’re Doing*, GREENPEACE, <http://www.greenpeace.org/usa/what-we-do/> [<https://perma.cc/KV4Q-FMSU>].

Table 4

GREENPEACE USA			
GOAL	GOVERNANCE PRIORITY	TARGET OF CHANGE	KEY TACTICS
Environment	Private Prescription	Corporations	Direct Action
Peace		Elected Policymakers	Public Outreach
		Individuals	Market Influence
			Info Sharing

### 3. *Environmental Defense Fund*

*Goal.* The mission of the Environmental Defense Fund is “to preserve the natural systems on which all life depends.”<sup>222</sup> In addition, EDF’s website has an “our values” section in which it says, “[w]e believe prosperity and environmental stewardship must go hand in hand.”<sup>223</sup> Likewise, it offers an “our focus” statement “benefit people while protecting natural systems.”<sup>224</sup> There is an undeniable focus here on “natural systems” which is synonymous with “the environment,” “the planet,” or other similar concerns. But, as evidenced from their comments about environmental goals going “hand in hand with prosperity” or “benefiting people,” EDF pairs its overarching environmental concern with “prosperity,” with thriving human communities.

*Governance Priority.* In the last stages of editing this article EDF significantly changed the navigation on and organization of

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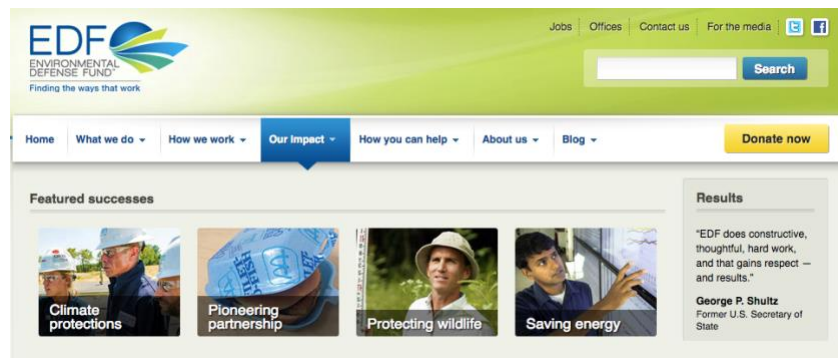
222. *Our Mission and Values*, ENVTL. DEF. FUND, <https://www.edf.org/about/our-mission-and-values> [<https://perma.cc/8LBR-CS7J>].

223. *About Environmental Defense Fund*, *supra* note 53.

224. *Id.*

its website.<sup>225</sup> Given this change, the governance analysis relies on the EDF website as it was on November 22, 2017. EDF highlighted its governance priorities in its victory page, pictured below as Figure 2.<sup>226</sup> This window highlights four key successes that provide important insight into EDF's priorities. The successes that EDF highlights are "Climate protections," "Pioneering partnerships," "Protecting wildlife," and "Saving energy."<sup>227</sup>

Figure 2



"Climate Protections" leads to a discussion of how EDF has been involved in researching methane leakage.<sup>228</sup> This work is focused on information gathering ("filling a problematic data gap") and collaboration with private industry and research institutions ("collaboration has been critical").<sup>229</sup> "Pioneering partnerships" is, naturally, about consultation and collaboration,

225. Compare ENVTL. DEF. FUND, [https:// web.archive.org/ web/ 20171202034338/ https://www.edf.org/](https://web.archive.org/web/20171202034338/https://www.edf.org/) [<https://perma.cc/HQ9F-CWL5>] (the EDF homepage as saved through the Wayback Machine on Dec. 2, 2017), with ENVTL. DEF. FUND, [https:// www.edf.org/](https://www.edf.org/) [<https://perma.cc/YY2N-MRDX>] (the EDF homepage as it appeared on April 29, 2018).

226. *Featured Successes*, ENVTL. DEF. FUND, [https:// www.edf.org/](https://www.edf.org/) [<https://perma.cc/YY2N-MRDX>] (hover over the "Our Impact" tab at the top of each page). The website has since changed but historical examples are available through the Internet Archive "Wayback Machine", [https:// web.archive.org/ web/ 20171119072742/ https:// www.edf.org/](https://web.archive.org/web/20171119072742/https://www.edf.org/) [<https://perma.cc/A49T-VNK2>].

227. *Id.*

228. *Extensive Research Effort Tackles Methane Leaks*, ENVTL. DEF. FUND, [https:// www.edf.org/ climate/ methane- studies](https://www.edf.org/climate/methane-studies) [<https://perma.cc/K8EE-5VT3>].

229. *Id.*

highlighting the groundbreaking work EDF began in the 1980's with McDonald's to end the restaurant's use of Styrofoam and to reduce its overall waste.<sup>230</sup> This highlights a private, voluntary, collaborative strategy. In "Protecting wildlife" EDF highlights its work with private landowners to create conservation incentives rather than proscriptive regulatory regimes.<sup>231</sup> The website describes the effort as one to "make protecting wildlife in the best interest of landowners."<sup>232</sup> It likewise describes farmers and ranchers as the "key players" in this victories campaign.<sup>233</sup> Finally, in its description of how it has led to "Saving energy," EDF focuses on "thriving business" and "the sharpest edge in business."<sup>234</sup> This victory highlights the EDF Climate Corps program, which teams up graduate students with businesses to help find cutting-edge ways to save money while protecting the environment.<sup>235</sup> This is a voluntary, private sector approach.

These four key success areas show a primary governance focus on private strategies. These private governance strategies are varied, including market-based approaches where EDF seeks competitive advantage for example, through its Climate Corps program, where it seeks information disclosure, as with its methane research, and where it advances quasi-prescriptive approaches as with its McDonald's collaboration. Thus, EDF's primary governance priority is private governance, but it is agnostic about the specific mechanism. EDF also promotes public governance, but in this area it is more focused on market-based incentives, as highlighted by its efforts to create government incentives for wildlife conservation.

*Targets of Change.* EDF's targets are more diverse than its governance priority might suggest. On the "about us" page,

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230. *McDonald's Cuts Waste—Saving Billions*, ENVTL. DEF. FUND, <https://www.edf.org/partnerships/mcdonalds> [<https://perma.cc/UD7D-J677>].

231. *Protecting Wildlife on Private Land*, ENVTL. DEF. FUND, <https://www.edf.org/ecosystems/protecting-wildlife-right-incentives> [<https://perma.cc/C37M-RAFK>].

232. *Id.*

233. *Id.*

234. *EDF Climate Corps: The Sharpest Edge in Business*, ENVTL. DEF. FUND, <https://www.edf.org/approach/edf-climate-corps-sharpest-edge-business> [<https://perma.cc/BM6Q-NYSE>].

235. *Id.*

EDF describes “forging the way forward” through “bipartisan environmentalism,” which includes working with “Democrats and Republicans” for “federal action toward reducing climate-harming methane emissions.”<sup>236</sup> This clearly describes work with policymakers at the federal level, and suggests an effort to target both elected and administrative federal policymakers. At the same time, many of EDF’s campaigns are also focused on businesses. EDF frequently reiterates its collaboration with McDonald’s,<sup>237</sup> and its ongoing campaigns with Wal-Mart.<sup>238</sup> Thus, EDF’s targets are federal policymakers of all types and business leaders.

*Key Tactics.* EDF’s homepage has a section labeled “How we get results,” which perfectly describes its key tactics.<sup>239</sup> Here, EDF points to four areas: economics, partnerships, bipartisanship, and science.<sup>240</sup> Under the header of “economics” EDF describes its use of markets “mak[ing] it profitable to protect nature.”<sup>241</sup> Within “partnerships” EDF describes the importance of teaming with businesses because “powerful partners” help leverage change.<sup>242</sup> “Nonpartisan policy” uses policy advocacy strategies

236. *About Environmental Defense Fund*, *supra* note 53.

237. *See, e.g., McDonald’s: Better Packaging*, ENVTL. DEF. FUND, [http://business.edf.org/projects/featured/past-projects/better-packaging-with-mcdonalds/?\\_ga=2.42661989.17117704.1511797597-2108026588.1502820276](http://business.edf.org/projects/featured/past-projects/better-packaging-with-mcdonalds/?_ga=2.42661989.17117704.1511797597-2108026588.1502820276) [<https://perma.cc/JZU6-EHWT>]; *McDonald’s and Environmental Defense Fund Mark 20 Years of Partnerships for Sustainability*, ENVTL. DEF. FUND (Nov. 15, 2010), <https://www.edf.org/news/mcdonald%E2%80%99s-and-environmental-defense-fund-mark-20-years-partnerships-sustainability> [<https://perma.cc/DK5F-UB87>]; *McDonald’s Cuts Waste — Saving Billions*, *supra* note 230.

238. *See, e.g., About Environmental Defense Fund*, *supra* note 53; *EDF & Walmart: Partnership Timeline*, ENVTL. DEF. FUND, <http://business.edf.org/projects/featured/sustainable-supply-chains/edf-walmart-journey/edf-and-walmart-partnership-timeline/> [<https://perma.cc/9SPM-8356>]; *Getting Toxics Out of Household Products*, ENVTL. DEF. FUND, <https://www.edf.org/health/chemicals/getting-toxics-out-what-we-buy> [<https://perma.cc/4PFD-9WX4>]; *Our Partnership with Walmart Brings Big Change*, ENVTL. DEF. FUND, <https://www.edf.org/partnerships/walmart> [<https://perma.cc/J4MH-J75F>].

239. ENVTL. DEF. FUND, [www.edf.org](http://www.edf.org) [<https://perma.cc/4FUQ-JZ22>].

240. *Id.*

241. *Economics: Making it Profitable to Protect Nature*, ENVTL. DEF. FUND, <https://www.edf.org/approach/markets> [<https://perma.cc/Q9S6-2MS2>].

242. *Partnerships: The Key to Scalable Solutions*, ENVTL. DEF. FUND, <https://www.edf.org/approach/partnerships> [<https://perma.cc/Y97X-L9SJ>].



to advance environmental legislation.<sup>243</sup> “Science” is the basis for all EDF’s work because, EDF explains, science leads to “proven solutions to environmental issues.”<sup>244</sup> Given these explicit statements, EDFs key tactics are consulting and collaborative partnerships, policy advocacy, and research.

Table 5

ENVIRONMENTAL DEFENSE FUND			
GOAL	GOVERNANCE PRIORITY	TARGET OF CHANGE	KEY TACTICS
<ul style="list-style-type: none"> <li>• Environment</li> <li>• Prosperity</li> </ul>	<ul style="list-style-type: none"> <li>• Private: Agnostic</li> <li>• Public: Markets</li> </ul>	<ul style="list-style-type: none"> <li>• Businesses</li> <li>• All Policymakers</li> </ul>	<ul style="list-style-type: none"> <li>• Partnerships</li> <li>• Policy Advocacy</li> <li>• Research</li> </ul>

#### 4. Natural Resources Defense Council

*Goal.* Like many other organizations, both nature and people are at the center of the Natural Resource Defense Council’s efforts.<sup>245</sup> The NRDC mission reads: “NRDC works to safeguard the earth—its people, its plants and animals, and the natural systems on which all life depends.”<sup>246</sup> On the “about us” page NRDC goes on to further elaborate that it seeks to “ensure

243. Policy: Cultivating Nonpartisan Solutions, ENVTL. DEF. FUND, <https://www.edf.org/approach/policy> [https://perma.cc/8276-2NQU].

244. Science: The Driving Force Behind Our Work, ENVTL. DEF. FUND, <https://www.edf.org/approach/science> [https://perma.cc/B8W8-HXCD].

245. NRDC, *About Us*, *supra* note 180.

246. *Id.*

the rights of all people to the air, the water, and the wild.”<sup>247</sup> The initial mission statement elevates the broader environment, but the specific mention of people, and the latter mention of “rights of all people” both show the importance of protecting people, not just the environment, as dual goals.

*Governance Priority.* NRDC is less communicative about its governance priorities than other organizations. It does not frequently cite and laude its private or public governance efforts in the same terms as others. However, it is possible to divine its governance philosophy. The “our stories” section of the website catalogues the victories that NRDC chooses to highlight.<sup>248</sup> Although the constantly rotating selection of efforts make it somewhat difficult to track, these stories are primarily focused on public governance. There is a description of federal seabed protection, of banning offshore drilling, and banning wildlife poisons.<sup>249</sup> These stories come along with stories of public-NGO collaboration, such as an effort in which NRDC and the U.S. Fish and Wildlife Service worked together to reduce bear mortality and municipal efforts to improve bus service.<sup>250</sup> In both cases NRDC is focused on public governance. What advances proscriptive public governance as the specific priority is the call to action on this same page, which asks readers to contact federal policymakers, including senators and the President, asking these leaders to support a variety of prescriptive policies or to oppose weakening of existing standards.<sup>251</sup>

*Target of Change.* As with its governance priority, NRDC is also less consistent and communicative about its targets of change as compared to, for example, EDF. The “our work” page describes the importance for preventing “special interests from undermining public interests.”<sup>252</sup> This points to corporations, or more precisely, trade associations, as targets. Indeed, in its food

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247. *Id.*

248. *Our Stories*, NAT. RESOURCES DEF. COUNCIL, <https://www.nrdc.org/stories> [<https://perma.cc/AEY8-TWAN>].

249. *Id.*

250. *Id.*

251. *Id.*

252. *Our Work*, NAT. RESOURCES DEF. COUNCIL, <https://www.nrdc.org/work> [<https://perma.cc/BSW4-86CT>].

program<sup>253</sup> and wildlife program<sup>254</sup> NRDC does target business entities.<sup>255</sup> The food program “pushes corporations.”<sup>256</sup> The wildlife program “protects wildlife and unspoiled lands from the threats of industrial development, commercial exploitation, pollution, and climate change.”<sup>257</sup> All of this is related to private endeavor, and NRDC targets “ranchers, farmers, [and] energy companies” to achieve their goals.<sup>258</sup> But in both cases NRDC also partners with and pushes on government.<sup>259</sup> Moreover, in their other program areas, government receives individual attention as a target. The health program targets federal policymakers through legal action,<sup>260</sup> the oceans program describes a focus on law and bans, and therefore the necessary targeting of policymakers,<sup>261</sup> and in their climate and communities programs litigation targeting government action are essential.<sup>262</sup> NRDC’s primary targets are policymakers of all types, but businesses—as opponents and collaborators—are also significant targets.

*Key Tactics.* While NRDC makes it somewhat difficult to assess its characteristics within the other categories of this framework, it does explicitly describe its key tactics. It lists five key tactics under the heading “how we work”: litigation, business, science, partnership, and advocacy.<sup>263</sup> It does not, however, give equal weight to each of these tactics. Litigation is clearly the most central tactic, as it appears as a tool in almost all of the NRDC

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253. *Food*, NAT. RESOURCES DEF. COUNCIL, <https://www.nrdc.org/issues/food> [<https://perma.cc/4WFF-F8K8>].

254. *The Wild*, NAT. RESOURCES DEF. COUNCIL, <https://www.nrdc.org/issues/wild> [<https://perma.cc/C8CK-JXXS>].

255. *Food*, *supra* note 253; *The Wild*, *supra* note 254.

256. *Food*, *supra* note 253.

257. *The Wild*, *supra* note 254.

258. *Id.*

259. *Id.*; *Food*, *supra* note 253.

260. *Health*, NAT. RESOURCES DEF. COUNCIL, <https://www.nrdc.org/issues/health> [<https://perma.cc/P4BW-M9CR>].

261. *Oceans*, NAT. RESOURCES DEF. COUNCIL, <https://www.nrdc.org/issues/oceans> [<https://perma.cc/K5K2-QBUJ>].

262. *Climate Change*, NAT. RESOURCES DEF. COUNCIL, <https://www.nrdc.org/issues/climate-change> [<https://perma.cc/S6QB-JKRZ>]; *Communities*, NAT. RESOURCES DEF. COUNCIL, <https://www.nrdc.org/issues/communities> [<https://perma.cc/WC3A-WW4E>].

263. *Our Work*, *supra* note 252.

program areas.<sup>264</sup> In describing the climate program NRDC says “we win court cases.”<sup>265</sup> To protect communities, NRDC “lawyers go to court on their behalf.”<sup>266</sup> NRDC goes after the government when agencies fail to enforce health standards by “tak[ing] them to court.”<sup>267</sup> While NRDC definitely uses a variety of other tactics, including science-based expertise and partnerships, litigation is its key tool.

Table 6

NATURAL RESOURCES DEFENSE COUNCIL			
GOAL	GOVERNANCE PRIORITY	TARGET OF CHANGE	KEY TACTICS
<ul style="list-style-type: none"> <li>• Nature</li> <li>• People</li> </ul>	Public: Prescription	<ul style="list-style-type: none"> <li>• All Policymakers</li> <li>• Businesses</li> </ul>	<ul style="list-style-type: none"> <li>• Litigation</li> </ul>

### 5. League of Conservation Voters

*Goal.* The League of Conservation Voters is unique in that its mission statement speaks less to its goals than its tactics.<sup>268</sup> Where it does point to goals, the mission statement speaks of turning “environmental values” into policy priorities and electing “pro-environment” candidates.<sup>269</sup> Elsewhere in its high-level

264. *Climate Change*, *supra* note 262; *Communities*, *supra* note 262; *Health*, *supra* note 260; *Water*, NAT. RESOURCES DEF. COUNCIL, <https://www.nrdc.org/issues/water>; *The Wild*, *supra* note 254.

265. *Climate Change*, *supra* note 262.

266. *Communities*, *supra* note 262.

267. *Environmental Justice*, NAT. RESOURCES DEF. COUNCIL, <https://www.nrdc.org/about/environmental-justice> [<https://perma.cc/VB62-8TLN>].

268. LCV, *Mission*, *supra* note 181.

269. *Id.*

descriptions, LCV speaks of “combating climate change” and “protecting the environment.”<sup>270</sup> More comprehensively LCV writes about diversity, explaining “LCV’s diversity, equity and inclusivity priorities that we hope will foster a strong, participatory democracy and environmental movement rooted in racially, politically and geographically diverse communities across the country.”<sup>271</sup> This excerpt suggests that in addition to broad environmental protection, “participatory democracy” is also a goal. Given its explicit and frequent focus on environmental protection, “environment” seems the obvious goal. But the focus on elections and participation also lend credence to the assertion that participatory democracy is an important goal in LCV’s work.

*Governance Priority.* All of LCV’s highlighted victories describe public governance.<sup>272</sup> Although they do not have a specific victories page, the page that includes LCV’s mission statement highlights many victories.<sup>273</sup> They describe being a “standard bearer to determine the environmental record of all members of Congress.”<sup>274</sup> They promote their role in electing and re-electing many dozens of senators and hundreds of representatives.<sup>275</sup> Conversely, LCV explains how the majority of their “Dirty Dozen” anti-environmental candidates were defeated.<sup>276</sup> These electoral victories do not prioritize any specific governance tools, but as they are focused on federal electoral politics, they do seem to prioritize public governance generally. Thus, LCV’s governance priority is on public governance but is agnostic on more specific mechanisms.

*Target of Change.* By limiting its work to electoral politics, LCV has also limited its primary targets. In its most well-known effort, the LCV scores politicians on their

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270. *Id.*

271. *Id.*

272. *Id.*

273. LCV, *Mission*, *supra* note 181.

274. *Id.*

275. *Id.*

276. *Id.*

environmental voting record.<sup>277</sup> Through this they create political endorsements and rejections.<sup>278</sup> This effort targets elected policymakers by attempting to influence their votes based on elections. At the same time, the National Environmental Scorecard is a tool for the public, as voters, as they make political decisions.<sup>279</sup> LCV, therefore, targets both elected officials and individual voters.

*Key Tactics.* In the effort to persuade voters and pressure elected officials, LCV uses outreach and information sharing.<sup>280</sup> They produce information for public decisionmaking through their Scorecard (LCV “has provided objective, factual information about the most important environmental legislation considered in Congress”)<sup>281</sup> and they use a variety of public outreach efforts in order convey this information to voters.<sup>282</sup> Outreach includes “utilizing extensive TV, digital, grassroots, and earned media campaigns to let the public know about lawmakers’ environmental voting records.”<sup>283</sup>

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277. *National Environmental Scorecard*, LEAGUE CONSERVATION VOTERS, <http://scorecard.lcv.org/> [<https://perma.cc/6A6M-LWQF>].

278. LCV, *Mission*, *supra* note 181.

279. *National Environmental Scorecard: Overview*, LEAGUE CONSERVATION VOTERS, <http://scorecard.lcv.org/overview> [<https://perma.cc/L5D9-JCLW>].

280. *Our Impact*, LEAGUE CONSERVATION VOTERS, <https://www.lcv.org/our-impact/> [<https://perma.cc/9N9L-A85R>].

281. LCV, *Mission*, *supra* note 181.

282. *Our Impact*, *supra* note 280.

283. LCV, *Mission*, *supra* note 181.

Table 7

LEAGUE OF CONSERVATION VOTERS			
GOAL	GOVERNANCE PRIORITY	TARGET OF CHANGE	KEY TACTICS
<ul style="list-style-type: none"> <li>• Environment</li> <li>• Participatory Democracy</li> </ul>	Public: Agnostic	<ul style="list-style-type: none"> <li>• Voters</li> <li>• Elected Policymakers</li> </ul>	<ul style="list-style-type: none"> <li>• Public Outreach</li> <li>• Info Sharing</li> </ul>

### 6. *Union of Concerned Scientists*

*Goal.* “The Union of Concerned Scientists puts rigorous independent science to work to solve our planet’s most pressing problems. Joining with people across the country we combine technical analysis and effective advocacy to create innovative, practical solutions for a healthy, safe, and sustainable future.”<sup>284</sup> This mission statement from UCS points to two key goals. The first “our planet’s most pressing problem” signals general environmental goals, though the possessive nature of “our planet’s” problems suggests a distinctly human orientation. This is born out by the latter focus on “solutions for a healthy, safe, and sustainable future.”<sup>285</sup> “Healthy” and “safe,” in particular, but also “sustainable,” all point to a primarily human focus. Further, in describing the organization, the “about us” page discusses the goals of developing “sustainable ways to feed, power, and transport ourselves, to fighting misinformation, advancing racial equity, and reducing the threat of nuclear

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284. UCS, *About Us*, *supra* note 180.

285. *Id.*

war.”<sup>286</sup> Each of these items is human focused, and suggests that UCS’ goal is protecting people.

*Governance Priority.* For each of its six program areas UCS offers a description of its preferred solutions, which give deep insight into its governance priority.<sup>287</sup> For example, to advance clean energy, UCS promotes “renewable electricity standards . . . [and] clean energy tax credits” as “policies that promote renewable energy and lower barriers to its adoption.”<sup>288</sup> In its clean vehicle work UCS argues that “[i]mproving the fuel economy of our nation’s vehicles offers the single greatest opportunity for reducing oil consumption—and federal policy provides the most powerful tool for accomplishing it.”<sup>289</sup> With respect to global warming UCS says that “[a]s individuals, we can help . . . [,] [b]ut to fully address the threat of global warming, we must demand action from our elected leaders.”<sup>290</sup> Even in its food program, an area where private solutions seem more common, UCS cautions “[f]arm policy has become part of the problem—subsidizing the wrong foods, steering research dollars toward industrial agriculture, and creating roadblocks for farmers who . . . use sustainable practices.”<sup>291</sup> But they promise that “policy solutions that will help farmers feed a healthy America are on the table . . . .”<sup>292</sup>

UCS is prioritizing public governance, but from prescriptive standards to new investments and a more deregulatory approach to food and agriculture, UCS is agnostic about the specific policy tool.

*Target of Change.* UCS’ efforts target policymakers as the key changemakers. Their campaigns speak of “demand[ing]

286. *Id.*

287. *See infra* notes 288-91.

288. *Clean Energy*, UNION CONCERNED SCIENTISTS, <http://www.ucsusa.org/clean-energy#.Whxyq7T81E4> [<https://perma.cc/8Q75-9Q2C>].

289. *Clean Vehicles*, UNION CONCERNED SCIENTISTS, <http://www.ucsusa.org/clean-vehicles#.WhxyrLT81E4> [<https://perma.cc/U4ZB-PLJP>] [hereinafter *Clean Vehicles*].

290. *Global Warming*, UNION CONCERNED SCIENTISTS, [http://www.ucsusa.org/global\\_warming](http://www.ucsusa.org/global_warming) [<https://perma.cc/NZZ4-PB4H>] [hereinafter *Global Warming*].

291. *Food & Agriculture*, UNION CONCERNED SCIENTISTS, [http://www.ucsusa.org/food\\_and\\_agriculture](http://www.ucsusa.org/food_and_agriculture) [<https://perma.cc/VD5T-GGFK>].

292. *Id.*



action from elected leaders.”<sup>293</sup> But they also target administrative policymakers through efforts such as their nuclear energy program in which they pressure the Nuclear Regulatory Commission to adopt and enforce strict safety standards and overall, “better-regulated nuclear power in the United States.”<sup>294</sup>

In the “take action” section of their website UCS offers seven ways that individuals can currently take action.<sup>295</sup> All seven ask individuals to target elected leaders by telling their governor, senators, state officials, or the federal administration to take specific actions on various environmental issues.<sup>296</sup>

Although there are places where UCS mentions the role of entrepreneurs and private businesses,<sup>297</sup> the great weight of their effort clearly targets both elected and administrative policymakers.

*Key Tactics.* UCS explains its expertise and tactics on its “leadership and experts” page, which is nested under “about us.”<sup>298</sup> Here they explain that “[o]ur staff experts believe that rigorous analysis is the best way to understand the world’s pressing problems and develop effective solutions to them.”<sup>299</sup> Moreover, UCS describes itself as a leader in science communication.<sup>300</sup> Research and information sharing, therefore, are UCS’ key tactics.

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293. *Global Warming*, *supra* note 290.

294. *Nuclear Power*, UNION CONCERNED SCIENTISTS, [http:// www.ucsusa.org/nuclear- power](http://www.ucsusa.org/nuclear-power) [<https://perma.cc/5MX8-QXUL>].

295. *Action Center*, UNION CONCERNED SCIENTISTS, [http:// www.ucsusa.org/action-center](http://www.ucsusa.org/action-center) [<https://perma.cc/T8Q2-R5XT>].

296. *See, e.g., Nuclear Weapons Activism*, UNION CONCERNED SCIENTISTS, [https://www.ucsusa.org/take-action/ nuclear-weapons-activism](https://www.ucsusa.org/take-action/nuclear-weapons-activism) [<https://perma.cc/NKT9-C8GS>].

297. *See, e.g., Clean Vehicles*, *supra* note 289; *Food and Agriculture*, *supra* note 291.

298. *Leadership and Experts*, UNION CONCERNED SCIENTISTS, [http://www.ucsusa.org/about/ leadership- experts](http://www.ucsusa.org/about/leadership-experts) [<https://perma.cc/5PU8-PYS6>].

299. *Id.*

300. *Id.*

Table 8

UNION OF CONCERNED SCIENTISTS			
GOAL	GOVERNANCE PRIORITY	TARGET OF CHANGE	KEY TACTICS
People	Public: Agnostic	All Policymakers	<ul style="list-style-type: none"> <li>• Research</li> <li>• Info Sharing</li> </ul>

### 7. Sierra Club

*Goal.* Perhaps because it was originally crafted over a half century before the mission statements of most environmental groups, the Sierra Club's primary declaration of its goals reflects a slightly different focus than the others. The mission statement reads: "To explore, enjoy, and protect the wild places of the earth, To practice and promote the responsible use of the earth's ecosystems and resources; To educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives."<sup>301</sup> The first line of the mission statement—"To explore, enjoy, and protect . . ."—is also the tagline for the Sierra Club, emblazoned across the top of each webpage.<sup>302</sup> Given the primacy of this first aspect of the mission statement, exploration and enjoyment stand out as central goals.

A glance at the Club's program areas demonstrates a particular commitment to the second aspect of the mission statement as well. The five key programs that the Club advertises

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301. *Policies*, SIERRA CLUB, <https://sierraclub.org/policy> [<https://perma.cc/MP93-TQL6>].

302. *Id.*

(shown in figure 3, below) are focused on climate and energy (Ready for 100% [renewable energy], Beyond Coal, and Beyond Natural Gas), protecting Our Wild America, or championing outdoor recreation (Get Outside).<sup>303</sup> This focus on climate and wild land conservation furthers the importance of protecting wild places as a key goal alongside exploration and enjoyment.

Figure 3



*Governance Priority.* It is difficult to get a clear read on the Sierra Club’s governance philosophy because their website discusses more of the tactics they use and issues they address than the specific restrictions they seek. For example, the Beyond Coal Campaign describes the need to retire coal plants, but does not specify whether those retirements are prompted by private or public considerations.<sup>304</sup> It therefore requires more reading between the lines to decipher the Club’s philosophy than with some other organizations.

The focus of the Club’s mission statement on exploring, protecting, promoting, and educating all suggest the importance of private action to the organization’s philosophy. This importance is also manifest in several parts of the Club’s program areas. The “Our Wild America” campaign, for instance, describes

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303. SIERRA CLUB, <https://sierraclub.org/> [<https://perma.cc/NP8Z-988Q>] (hover over “See All Programs” tab).

304. *Beyond Coal: About Us*, SIERRA CLUB, <https://content.sierraclub.org/coal/about-the-campaign> [<https://perma.cc/RSD6-G5XN>].

the important efforts of private land owners.<sup>305</sup> Perhaps more importantly, the Outdoors For All sub-campaign (it is a component of Our Wild America) is focused exclusively on getting people outdoors rather than generating any specific public policy action.<sup>306</sup> In this respect it is arguable that here, and in other similar programs, the Sierra Club's priority is not governance at all. However, the language around the Outdoors For All campaign, as one example, does explain that protecting natural areas and enjoying natural areas are intertwined, and one cannot exist without the other.<sup>307</sup> "And along the way, a new generation of leaders will be inspired to protect and restore our lands, waters, wildlife, and communities."<sup>308</sup> Given that exploration and enjoyment are part of a larger protection strategy, this appears to be a prioritization of private governance. The more specific instrument of this private governance is more difficult to pinpoint. It appears that the Club is seeking, through engagement with and enjoyment of the outdoors, to make a cultural change in the market by changing the way individuals value natural spaces. (It is, however, possible that more engaged individuals will participate in political efforts for public governance and therefore to interpret this as a signal of public governance.)

The Club's "most extensive, expensive, and effective campaign" is the Beyond Coal Campaign.<sup>309</sup> This campaign relies on both private market strategies and public strategies.<sup>310</sup> On the private side, the Club describes as victories the retirements

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305. *Our Wild America: Protecting Lands, Wildlife, and Waters*, SIERRA CLUB, <https://content.sierraclub.org/ourwildamerica/protecting-lands-wildlife-and-waters> [<https://perma.cc/ZZ4N-TEBA>].

306. *Our Wild America: Outdoors*, SIERRA CLUB, <https://content.sierraclub.org/ourwildamerica/outdoors-all> [<https://perma.cc/78QC-UL2S>].

307. *Id.*

308. *Id.*

309. Michael Grunwald, *Inside the War on Coal*, POLITICO (May 26, 2015, 11:45 PM), <https://www.politico.com/agenda/story/2015/05/inside-war-on-coal-000002> [<https://perma.cc/Z9QD-D732>].

310. ZACH RAFF ET AL., EXPANDING BEYOND COAL: DATA COLLECTION, ECONOMIC REVITALIZATION AND WORKFORCE DEVELOPMENT STRATEGIES IN COMMUNITIES AFFECTED BY COAL PLANT CLOSURES 11-12 (2012), <https://content.sierraclub.org/coal/sites/content.sierraclub.org/files/Expanding%20Beyond%20Coal.pdf> [<https://perma.cc/F3VD-PWGR>].

of coal plants across the country.<sup>311</sup> These retirements are largely private economic decisions,<sup>312</sup> although the Club does not describe the decisionmaking process, or tag this as a private function, on its main page celebrating the retirements.<sup>313</sup>

The Club also prioritizes the public governance aspect of moving beyond coal. When describing the actions that individuals can take, they focus on pushing public decisionmakers including the President, the Environmental Protection Agency, and Congress.<sup>314</sup>

In other campaigns the Club continues to demonstrate its investment in public governance. Our Wild America speaks of the importance of “legal action” and “legislative advocacy . . . .”<sup>315</sup> Beyond Natural Gas demands “enacting strict safeguards” and “closing industry loopholes . . . .”<sup>316</sup> On the “about us” page, the Club also mentions its role in the passage of major environmental laws.<sup>317</sup> These campaigns show that in addition to a focus on private governance, the Club also prioritizes prescriptive public governance.

*Target of Change.* The Sierra Club targets policymakers at all levels of government as well as individuals. Several projects are focused explicitly and exclusively on getting individuals engaged in environmental activities such as the interrelated Get Outside campaign and the Sierra Club Outings program.<sup>318</sup> Get

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311. *Beyond Coal: About Us*, *supra* note 304.

312. Benjamin Storrow, *Big, Young Power Plants Are Closing. Is It a New Trend?*, E&E NEWS (Apr. 27, 2017), <https://www.eenews.net/stories/1060053677> [<https://perma.cc/UY4T-MLHC>].

313. *Beyond Coal: Victories*, SIERRA CLUB, <https://content.sierraclub.org/coal/victories> [<https://perma.cc/WK8Y-UP3H>].

314. Sierra Club, *Our Nation's Biggest Climate Action is Under Attack. Speak Up to Defend It!*, ADDUP, <https://www.addup.org/campaigns/our-nations-biggest-climate-action-is-at-risk-speak-up-to-defend-it> [<https://perma.cc/GG96-B2LZ>].

315. *Our Wild America: Beyond Dirty Fuels Initiative*, SIERRA CLUB, <https://content.sierraclub.org/ourwildamerica/beyond-dirty-fuels-initiative> [<https://perma.cc/T6KG-PCLB>].

316. JARED ROBINSON, SIERRA CLUB, CAMPAIGN OUTINGS TOOLKIT 16 (2012), [https://content.sierraclub.org/creative-archive/sites/content.sierraclub.org/creative-archive/files/pdfs/0528-Campaign-Outings-Toolkit\\_04\\_web\\_0.pdf](https://content.sierraclub.org/creative-archive/sites/content.sierraclub.org/creative-archive/files/pdfs/0528-Campaign-Outings-Toolkit_04_web_0.pdf) [<https://perma.cc/8JRP-WMEK>].

317. *About the Sierra Club*, *supra* note 182.

318. *Get Outside*, SIERRA CLUB, <https://content.sierraclub.org/outings/> [<https://perma.cc/5A25-XVVQ>].

Outside seeks to “[a]ctively engage people in the outdoors . . . [.]”<sup>319</sup> while Outings are “for people of all ages, abilities, and interests.”<sup>320</sup> Other projects are equally focused just on policymakers. The Ready for 100% campaign is aimed at mayors.<sup>321</sup> Beyond Oil works with cities, states and transit agencies,<sup>322</sup> advocates to policymakers at the state and federal level,<sup>323</sup> and pushes Congress, the president, and states.<sup>324</sup> In total, the Club’s key targets are individuals and all policymakers at all levels of government.

*Key Tactics.* The Sierra Club is a grassroots organization, which is both a mere tactic and an more existential structure.<sup>325</sup> On their homepage, the Club declares “We are the nation’s largest and most successful grassroots environmental organization.”<sup>326</sup> Grassroots activism is, of course, one of the key tactics, but there are others. On the Club’s boilerplate language at the bottom of each press release, they conveniently and concisely detail their key tactics.<sup>327</sup> The Club advances its work, says each press release, “through grassroots activism, public education, lobbying, and legal action.”<sup>328</sup> The Club’s key tactics, then, are grassroots activism, public outreach (which is equivalent to public education), policy advocacy (equivalent to lobbying), and litigation (equivalent to legal action).

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319. *Inspiring Connections Outdoors*, SIERRA CLUB, <https://content.sierraclub.org/outings/ico> [<https://perma.cc/PF9V-XNVH>].

320. *Ohio Chapter: Get Outdoors*, SIERRA CLUB, <https://www.sierraclub.org/ohio/get-outdoors> [<https://perma.cc/8RWX-QD32>].

321. *Ready For 100*, SIERRA CLUB, <https://www.sierraclub.org/ready-for-100> [<https://perma.cc/DQA7-X6TJ>].

322. *Clean Transportation*, SIERRA CLUB, <https://www.sierraclub.org/transportation> [<https://perma.cc/QP37-A49N>].

323. *Ready For 100*, *supra* note 321.

324. Sierra Club, *supra* note 314.

325. SIERRA CLUB, *supra* note 303.

326. *Id.*

327. See, e.g., Gabby Brown, *Media Advisory: SF Activists to Rally to Call on Wells Fargo to Divest from Keystone XL*, SIERRA CLUB (Nov. 27, 2017), <https://www.sierraclub.org/press-releases/2017/11/media-advisory-sf-activists-rally-call-wells-fargo-divest-keystone-xl> [<https://perma.cc/X7DN-8AAR>].

328. *Id.*

Table 9

SIERRA CLUB			
GOAL	GOVERNANCE PRIORITY	TARGET OF CHANGE	KEY TACTICS
<ul style="list-style-type: none"> <li>• Exploration and Enjoyment</li> <li>• Protecting Wild Places</li> </ul>	<ul style="list-style-type: none"> <li>• Public: Prescription</li> <li>• Private: Markets</li> </ul>	<ul style="list-style-type: none"> <li>• Individuals</li> <li>• All Policymakers</li> </ul>	<ul style="list-style-type: none"> <li>• Grassroots Activism</li> <li>• Public Outreach</li> <li>• Litigation</li> <li>• Policy Advocacy</li> </ul>

### 8. 350.org

*Goal.* 350.org does not have an obvious mission statement on its website. However, in the “about” page, the organization says “350.org is building a global grassroots climate movement that can hold our leaders accountable to science and justice.”<sup>329</sup> The same page further says that 350.org attempts to “oppose new coal, oil and gas projects, take money out of the companies that are heating up the planet, and build 100% clean energy solutions that work for all.”<sup>330</sup> The video on this same page describes the work 350.org does as a battle over power “not only power as energy, but we need to take back power from the fossil fuel industry.”<sup>331</sup> Further along the organization says “[w]e believe in a safe climate and a better future—a just, prosperous, and equitable world built with the power of ordinary people.”<sup>332</sup>

329. *About 350*, *supra* note 182.

330. *Id.*

331. *Id.*

332. *Id.*

In their history, 350.org explains that its “work leverages people power to dismantle the influence and the infrastructure of the fossil fuel industry.”<sup>333</sup> All of this focus on clean energy and fossil fuels demonstrates a clear goal of addressing climate change. In parallel, the repeated call to shift power from industry to people is a call for environmental populism. Thus, climate change and populism are the goals of 350.org.

*Governance Priority.* Although 350.org, like Sierra Club, tends to focus more on its tactics than governance prioritization, a survey of 350.org’s domestic victories and campaigns shows a clear preference for prescriptive public governance. The SolarXL campaign, which is using direct action (building solar farms in the path of the KeystoneXL Pipeline)<sup>334</sup> and the fossil fuel divestment efforts<sup>335</sup> are counter examples of private governance (respectively using property and markets). But the weight of efforts seek public restrictions. Various campaigns are focused on federal cabinet positions,<sup>336</sup> preventing offshore drilling,<sup>337</sup> stopping development of tar sands,<sup>338</sup> and using presidential power to stop the KeystoneXL Pipeline.<sup>339</sup> The fight against the Dakota Access Pipeline clearly targets the Army Corps of Engineers and the President, asking them to reject the pipeline.<sup>340</sup> Each of these efforts aims to use public authority to prescribe environmentally destructive projects.

*Target of Change.* The “how we work” statement on 350.org’s “about” page offers the best summary of their targets of

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333. *Id.*

334. #SolarXL: Resisting Keystone XL by Building Clean Energy in the Path of the Pipeline, 350.ORG, <https://350.org/solar-xl/> [<https://perma.cc/S7X5-DVQE>].

335. FOSSIL FREE, <https://gofossilfree.org/> [<https://perma.cc/ABC9-PM4F>].

336. *Where Your Senators Stand on the Climate Denier Cabinet*, 350.ORG, <https://350.org/denier-cabinet/> [<https://perma.cc/B86L-LXEY>].

337. *ZERO New Offshore Drilling*, 350.ORG, <https://act.350.org/sign/offshore-drilling-plan> [<https://perma.cc/4JPW-6KGE>].

338. *See, e.g., Archive: Tar Sands*, 350.ORG, <https://350.org/category/topic/tar-sands/> [<https://perma.cc/75LS-F3H9>]; *Who We Support*, TAR SANDS BLOCKADE, <https://tarsandsblockade.org/resistance/> [<https://perma.cc/LPD4-T6PS>] (listing the Maine subchapter of 350.org as a group “saying NO to tar sands”).

339. *Keystone XL – Victory!*, 350.ORG, <https://350.org/kxl-victory/> [<https://perma.cc/VDR9-YEDA>].

340. *President Obama: Stop the Dakota Access Pipeline*, 350.ORG, <http://act.350.org/sign/stop-dakota-access-pipeline/> [<https://perma.cc/6EW9-W6VN>].



change. 350.org explains that they are seeking to “revoke the social license of fossil fuel,” which is a targeting of individuals who, collectively, manifest any social license.<sup>341</sup> They promote community investment and “support communities confronting the impacts of climate change,”<sup>342</sup> which is also a focus on individuals as members of communities and small-scale financial decisionmakers. Finally, they pressure governments to make changes at all levels.<sup>343</sup> Individuals and elected officials are the targets of change.

*Key Tactics.* According to its “about” page, “350 uses online campaigns, grassroots organizing, and mass public actions . . . .”<sup>344</sup> They further declare “bringing people together” as a core principle.<sup>345</sup> 350.org builds “diverse coalitions that are strong enough to put pressure on governments and stand up to the fossil fuel industry.”<sup>346</sup> Grassroots organizing (at the local level) and mass organizing through online campaigns are the obvious tactics, but collaboration is also an important component of the work. While “collaboration” as a tactic frequently signals partnership with industry, 350.org uses collaboration to mean collaboration amongst a wider array of entities who can oppose the target industry “—not just environmentalists, but students, business owners, faith groups, labor unions, universities, and more . . . .”<sup>347</sup>

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341. *About 350*, *supra* note 182.

342. *Id.*

343. *Id.*

344. *Id.*

345. *Id.*

346. *About 350*, *supra* note 182.

347. *Id.*

Table 10

350.ORG			
GOAL	GOVERNANCE PRIORITY	TARGET OF CHANGE	KEY TACTICS
<ul style="list-style-type: none"> <li>• Climate Change</li> <li>• Populism</li> </ul>	Public: Prescription	<ul style="list-style-type: none"> <li>• Individuals</li> <li>• Elected Policymakers</li> </ul>	<ul style="list-style-type: none"> <li>• Grassroots Activism</li> <li>• Mass Organizing</li> <li>• Collaboration</li> </ul>

### B. Summary of Findings

Although I selected the NGOs for this study based on their diversity of approaches, the application of this new framework confirms that the universe of environmental NGOs is varied in many ways that are not typically considered in the private environmental governance literature but ways that are important in practice. The initial comparison of the Nature Conservancy and Greenpeace, for instance, holds true when considered more closely. Both organizations prioritize private governance, though each uses a distinctly different instrument within the area of private environmental governance. This is essential to private environmental governance in practice because the way that each group engages with the private sector is different, with TNC taking a more deferential approach and Greenpeace taking a more aggressive approach. Having a framework for better articulating these distinctions will foster a better understanding of the role of NGOs in private environmental governance.

More broadly, this analysis leads to two larger-scale observations. First, these environmental NGOs have similar

goals that do not consistently influence their other characteristics. Second, there is already a very significant interest in private governance among environmental NGOs.

Protecting people and the environment are the goals of most NGOs in this assessment. Each NGO phrases these issues slightly differently and emphasizes different aspects, but there is significant consistency here. Some organizations, like TNC and UCS are very explicit about their anthropocentric goals. Others are more nuanced, such as EDF, which focuses on prosperity, but with a clear interest in human prosperity. 350.org, LCV, and Greenpeace highlight populism, democracy, and peace. In all three cases the goal is about the agency and rights of individual people, even if not phrased that way. With respect to the environmental goal, it is sometimes phrased as protecting “nature,” sometimes “the environment,” and in one case “climate change” more specifically. Regardless of the exact phrasing of either pillar, the consistency here may surprise those who see environmental NGOs as “tree hugging” radicals who aim to protect plants and animals over human wellbeing.<sup>348</sup>

Half of the organizations considered in this analysis prioritize private environmental governance. Of these, it is common to see private governance paired with public governance, but the prevalence of NGOs participating in the private governance sphere undermines the general preconception that NGOs are opponents of private industry. While not inherently taking oppositional stances to private industry, this does not imply that NGOs are always working collaboratively. In the case of an organization like Greenpeace, the private efforts are more dialectic, creating a tension that, one hopes, will generate benefits to both the environment and the industry. Others, like the Environmental Defense Fund and Nature Conservancy, work more collaboratively, attempting to forge a win-win path that does not rely on tension or uncomfortable transitions. Importantly,

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348. See, e.g., Rod Dreher, *Why Do Conservatives Hate Environmentalism?*, AM. CONSERVATIVE (Mar. 14, 2014, 12:22 PM), <http://www.theamericanconservative.com/dreher/why-do-conservatives-hate-environmentalism/> [https://perma.cc/5RBT-NFKJ] (explaining that even Wendell Berry objects to environmentalists because they “make an idol of the natural world and forget about the legitimate needs of human communities”).

even those organizations that do not prioritize private governance do work in this space. In this analysis NRDC prioritizes public governance, but private environmental governance is explicitly a part—albeit a smaller part—of their work.<sup>349</sup> In other words, we should not overlook the strategic diversity among and within environmental NGOs.

On the other hand, while there is some strategic diversity within and among NGOs, there is still a significant lack of cultural, racial, and intellectual diversity.<sup>350</sup> That environmental NGOs are dominated by white, male leadership may undercut the general characterization that environmental NGOs are a certain breed of organization while corporate America, also dominated by white, male leadership,<sup>351</sup> is another.<sup>352</sup> Whether focused on corporate change, political process, or individual responsibility, one could reasonably look at the array of environmental NGOs and argue that they are working soundly within the same cultural status quo as corporate leaders, rather than generating radical change. This observation highlights the need for frameworks like the one presented in this article, which can serve as proxies for a variety of organizational characteristics, but it also argues for additional efforts to better understand environmental NGOs and how their work impacts not just legal and political outcomes, but broader social norms.

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349. See, e.g., *Center for Market Innovation*, NAT. RESOURCES DEF. COUNCIL, <https://www.nrdc.org/about/center-market-innovation> [https://perma.cc/HHX9-YABR].

350. DORECETA E. TAYLOR, *THE STATE OF DIVERSITY IN ENVIRONMENTAL ORGANIZATIONS* 3-7 (2014).

351. Stacy Jones, *White Men Account for 72% of Corporate Leadership at 16 of the Fortune 500 Companies*, FORTUNE (June 9, 2017), <http://fortune.com/2017/06/09/white-men-senior-executives-fortune-500-companies-diversity-data/> [https://perma.cc/DJ2V-8SY3].

352. See, e.g., Vandenbergh, *Wal-Mart*, *supra* note 1, at 969.

## VI. CONCLUSION

## A. The Importance of a Framework for Assessing Environmental NGOs

The literature on private environmental governance has consistently relied on the role of environmental NGOs to make private environmental efforts more effective.<sup>353</sup> However, that literature, which in many ways is still in its early stages, has not yet explored how NGOs, in fact, address private environmental governance. To help close this gap, this article proposes an assessment framework that looks at four characteristics of NGO activity in order to better, and more consistently, understand the relationship between NGOs and private environmental governance.

The categories of this new framework are goals, governance priority, targets, and tactics. These categories look to the primary goals that motivate each organization, the type of environmental restrictions that an organization prefers, the entities that an organization pressures to change, and the tools that an organization uses to make progress.

By applying this framework to eight diverse environmental NGOs, we can begin to see the diversity among these organizations, including their unique approaches to private environmental governance. Half of the NGO sample make private governance a key priority, though they use a variety of instruments within the private sphere, including market-influence, prescription-like standards, and even property ownership.<sup>354</sup> This conclusion advances the importance of private environmental governance as an academic and practical pursuit, but also demands that research in this field take a more serious and realistic look at the role of NGOs. Ideally, the new framework that this article develops will help in this endeavor.

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353. *See supra* Part II.A.

354. *See supra* Table 2 & Part IV.B.

B. The Importance of An Ecosystem of Environmental NGOs

Private environmental governance represents a new step in environmental protection and a new challenge for environmental NGOs. Since the early days of environmental public interest advocacy, NGOs have played at least two important roles. First, they have given a unified voice to the opinions of discrete individuals, allowing them to have a greater influence in decisionmaking.<sup>355</sup> Second, public interest groups create and shape public opinion in the first place.<sup>356</sup>

The importance of NGO engagement with private environmental governance is that it helps NGOs accomplish an important public demand: environmental protection. As Professor Vandenberg and many other scholars have noted, private firms have a major role to play in addressing environmental problems.<sup>357</sup> In advancing their first role—promoting the public interest in environmental protection—NGOs must therefore engage with private firms. As the analysis in this article shows, NGOs are embracing that role. But as more NGOs respond to environmental problems by engaging in private environmental governance, they must still attend to their second responsibility: shaping public interest in environmental protection. Counterproductively, in order to most effectively collaborate, NGO leadership must build trust, and trust demands restraint in public advocacy.<sup>358</sup>

While private firms have incentive to make important strides in environmental quality, the same incentives apparently do not exist to foster greater public interest in environmental protection. At the symposium from which this issue of the *Arkansas Law Review* is drawn, Laura Phillips, Walmart's Senior Vice President of Corporate Affairs and Sustainability, addressed

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355. JEFFREY M. BERRY, *LOBBYING FOR THE PEOPLE: THE POLITICAL BEHAVIOR OF PUBLIC INTEREST GROUPS* 3 (1977).

356. Benjamin I. Page et al., *What Moves Public Opinion?*, 81 AM. POL. SCI. REV. 23, 37 (1987).

357. See, e.g., Vandenberg, *Private Environmental Governance*, *supra* note 1, at 129.

358. Mark Seidenfeld, *Empowering Stakeholders: Limits on Collaboration as the Basis for Flexible Regulation*, 41 WM. & MARY L. REV. 411, 425-26 (2000).

this very issue. Phillips showed a promotional video touting Walmart's sustainability efforts, which featured such progressive figures as Michelle and Barack Obama, Bill Clinton, and a series of Hollywood movie stars.<sup>359</sup> It seemed as if Walmart was promoting its environmental progress to an audience already interested in environmental progress rather than persuading skeptical citizens. In response to my question about why Walmart did not try to build support for sustainability programs among more reticent customers, Phillips answered: "We talk to our customers about what's important to them . . . ."<sup>360</sup> In other words, Walmart doesn't shape public opinion, it responds to it.

Private governance, therefore, may make strides in response to existing public demand, but it does not generate demand. This undoubtedly leaves NGOs to build, shape, and activate public opinion. We currently see organizations like Greenpeace calling on the public to put pressure on private industry. We concurrently see organizations like TNC working with industry to implement some of the changes that groups like Greenpeace demand. What we do not see is a single organization working collaboratively with corporate leaders while also building public pressure on these same corporations. This is because NGO engagement in private environmental governance is restrictive. To some extent, NGOs have to "choose sides."

Fortunately, no NGO operates in a vacuum. As the analysis in this article suggests (and provides a foundation for further testing), there is an ecosystem of environmental NGOs, and each can fill a different niche. These niches are sometimes competitive, sometimes facilitative, and often have room for more than one inhabitant. While there may be a current disequilibrium, with a significant number of organizations embracing the private environmental governance, the diversity of the system is likely to sustain it.

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359. Laura Phillips, Senior Vice President of Corporate Affairs and Sustainability, Walmart, Keynote Address at the Arkansas Law Review Symposium: Environmental Sustainability and Private Governance (Oct. 27, 2017).

360. *Id.*